

THE
High Court ¹³
OF
JUSTICE, ¹³
OR
CROMWELLS New Slaughter-
House in
ENGLAND.

With the Authority that Constituted,
and Ordained it.

Arraigned, Convicted, and Condemned,

FOR
Usurpation, Treason, Tyranny, Theft
and Murther.

Being the Third Part of the *History of*
INDEPENDENCY,

Written by the same Authour.

Printed *Anno Domini* 1660. In the second Year
of the States Liberty, and the Peoples Slavery.

High Court

Plin. Paneg. ad Trajanum.

Olim criminibus, jam legibus laboratur; & metuendum est, ne legibus fundata Respublica, sit legibus eversa.

Isaiah 59. vers. 3, 4.

Your hands are defiled with blood, and your fingers with iniquity, your lips have spoken lyes, your tongues have muttered perversness. None calleth for Justice, nor any pleadeth for truth; they trust in vanity and speak lies, they conceive Mischief, and bring forth Iniquity.

Vers. 7.

Their feet run to evil, and they make haste to shed innocent blood; their thoughts are thoughts of iniquity, wasting and destruction are in their pathes. The way of peace they know not, and there is no judgement in their goings.

Vers. 11.

We look for Judgement, but there is none; For Salvation, but it is far from us.

Vers. 14.

Judgement is turned away backward, and Justice standeth afar off; For truth is fallen in the streets, and Equity cannot enter.



That every thing is kept and maintained by the same wayes and means it was got and obtained, Unumquod
conservat
eodem mo
quo fit.
is a rule true both in Philosophy and Policy.

And therefore Dominion gotten by fraud and force, must by fraud and force be preserved. Things impiously got, must be impiously kept. When usurped Tyranny layes its foundation in blood, the whole Superstruction must be built with Mortar, tempered with blood. One sin must defend and make good another. And hence ariseth a Necessity upon Ambitious men to flanke and fortifie one Crime with another. But to plead this Necessity, which they have so wilfully drawn upon themselves, in justification of their wicked Courses. To expect submission, obedience, and an equal engagement from men uninterrested therein; and to entitle the Divine Providence and unrevealed Will of God thereto (in opposition to His Will revealed and declared in the Scriptures, as is now a dayes used) is to accuse the Holy Ghost of our Sins, and an Hypocrisie so impudently sinful and damnable, that I doubt no Age but this (the Dregs and Lees of time) ever gave an example of the like.

TO illustrate my first Maxime by some forreign Examples (before I lay the Bastard at our own Doors) *Sylla* at *Rome*, by the power of the Sword, proclaimed (or voted) himself Dictator, to make good which usurpation with a Mask of Authority, he compelled the Senate, or Parliament) to approve of all his forepassed

Villanies, Murthers and illegal Acts, and to confer a power upon him; To kill whom he pleased and confiscate their Estates; To build and destroy Cities; Dispose Kingdomes; And exercise an Arbitrary, Supreme Authority, and then (to establish himself in his self-created power) he posted up at Rome, and in most Cities of Italy, Bills of Proscription or Outlawry, containing the names of such persons, as (without any form of Law or Justice) he appointed to be slain by his Soldiers. These Proscribed men were (for the most part) such as having some sparks of Roman vertue in them, durst love the antient Government, Laws and Liberties of Rome, and were therefore thought fit to be weeded out, as Malignants against his Innovations and arbitrary courses. Yet many mean spirited fellows, were proscribed and murdered, partly for confiscation of their Estates, and partly to gratifie the malice and hatred of particular friends who (in that carnage) prayed in aid of Syllas sword to rid them of their Enemies.

After this Augustus Cæsar at Rome, having by terror of Arms made himself Consul, and finding himself not strong enough singly to subjugate his Country, he called Antonius and Lepidus to joyn with him, with whom entring into confederacy to subvert the fundamental Government, and usurp the Supreme Authority; they divide that vast Empire between them, and passed a Decree amongst themselves, that they should be called the Triumvirate for Reforming and Re-establishing the Commonwealth (well enough before if they had let it alone) with Supreme Authority to give Estates and Offices to whom they thought fit, without asking the advice of Senate or people. They appointed what Consuls, Magistrates & officers they pleased
They

They designed rich donatives, and 18 of the Chief Cities of *Italy* to be given to their Souldiers, if, by their valour they should obtain victory over *Brutus* and *Cassius*. They fixed publick lists or Tables of Proscription, naming such persons as they exposed to slaughter. They proscribed at one time 130 Senators, at another time 150 and 2000 Knights. Whereby the best men for understanding, Conduct, Resolution and Affection, beeing cut off, the rest (terrified by their example) became but *Terra Maledicta* (as Chymicks call it) dull liveless Ashes or clods of Earth, without power or vertue to quicken them, or make them productive. After some revolutions, wherein *Augustus* and *Antonius* had discarded the dull and stupid *Lepidus*, and (at last) *Augustus* had subdued *Antonius*: *Augustus* usurped the Title of *Tribune of the People*, whereby his Person became sacred and inviolable; and (humouring the irrational Animals) took upon him the special Protection of that Brutish Herd, the Rascal Multitude, the Tribunes of the people having been originally instituted to Protect the people. His next step was to make himself *Perpetual Dictator*, whereby he arrogated to himself a vast unlimited power above all Lawes. The Tribuneship was his Buckler. The Dictatroskip was his Sword. And last of all (for Ornament only) He having already full power of an absolute Monarch (although he forbore the Title of (King) because it was hateful to the people, and against the Laws even since the *Regifugium*) he took upon him the Title of *Princeps Senatus*, or *President of the Senate*; to keep a corresponding power over that great Counsel or Parliament: And finally usurped the Title and Office of *Imperator* or *Generalissimo* of all Forces by Land and Sea, Garrisons, &c.

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Philip King of Spain, Lord of the 17. Belgick Provinces, by several Titles, and under several limitations, Priviledges, Exemptions and Fundamental Laws, according to which he was to govern, and they to obey: Resolving to subvert the Fundamentall Lawes and Government, and reduce those 17. petty Signiories into one meer absolute Monarchy, sent the Duke *D'Alva* thither (a Warriour of a resolute stern nature) Governour, with a powerful Army; Who taking advantage of some rude Commotions formerly raised by the Protestants, in throwing down Images, and Sacrilegiously plundering Churches, erected a *New Tribunal Criminal*, or (to speak in our modern uncouth Language) *A High Court of Justice*, consisting of 12 Commissioners or Judges purposely chosen, most of them hangersby of the Law, of mean fortunes, practice, birth, and breeding; Covetous, Ambitious, and slavishly addicted to the Spanish Faction. To these was given by special Commission full Power and Authority to enquire into, and judge (or to hear and determine) the forepassed Commotions, whereupon they stiled this Court, *Concilium Turbarum*, but the multitude called it *Concilium Sanguinis*, or the *Bloody Conventicle*. This Councel or Inquisition did supersede or extinguish the Authority of all other Courts of Judicature, and make void all Laws, Constitutions, Jurisdictions, and Priviledges of the Nation, as to the aforesaid commotions, and all other causes they pleased to call High Treason. They had no other bounds nor limits in their proceedings, than what they prefixed to themselves in certain Articles. Some few whereof I will here present unto my Reader, because they judged of High Treason by those Articles, not by the

the known Laws of the Land (a thing very observable and applicable to my purpose) so that they were not only Judges, Leges dicere, but also Law-makers, Leges dare: as all Judges are who take upon them a liberty to observe no set forms of proceedings, but at their own pleasure.

1. *Article.* All Petitions heretofore tendered to the States, or Cities Corporate against the erecting of new Episcopal Sees: or against the Holy Inquisition: or requiring a Moderation of Decrees or Acts of State Parliament, are accounted meer conspiracies against God and the King.

Petitioning against Inno-
vations in
Government,
and for the
known Laws
made Treason, the like

the Parliament practiseth against such as petitioned for peace by accommodation. And against our High Court of Justice, Arbitrary Imprisonments and Taxes.

2. *Art.* All Nobles, Gentry, Judges, Magistrates, and all others who connived at Heretical Sermons, plundering of Churches, and delivering such Petitions as aforesaid, pretending the necessity of the times, and did not resist and oppose them.

3. *Art.* Whosoever affirms that all His Majesties Subjects of Belgia have not forfeited their ancient Privileges, immunities and laws for Treason: and that it is not lawful for the King to use and handle them for the aforesaid Treasons as he pleaseth, to prevent the like Treasons for the time to come, and that the King is not absolved thereby from all Oaths, Promises, Grants, Contracts and Obligations whatsoever.

We have forfeited our laws by conquest, or else our Grandees would not pass the two Acts for Treason, 14. May, 17. July, 1648. nor erect the High

Court of Justice, and abolish our ancient lawes and government. See Pol. 3. the Case of the Kingdome stated. O^r. 1650. and

Art. 4.

Compare this with the two Acts for New Treasons, 14. May, 17. Ju-ly, 1649. and the Act 26 March, 1650. and Sir John Gells Case stated.

Our High Court of Just. exceeds all this. See Sir John Gells Case stated, Printed Aug. 1650.

4. Art. *They that affirm this Councel or High Court of Justice exercise Tyranny in their Proceedings, or Judgements; and that they are not Supreme and competent Judges in all causes Criminal and Civil.*

5. Art. *Those that in case of Heresie deny, that all manner of Informers and Witnesses of whatsoever Degree and condition they be, are to be credited: and that upon the Testimony of any two witnesses, this High Court ought to proceed to Judgment, Execution, and Confiscation of life and goods, without publishing the cause or charge, and without any legal form of Trial. All these are guilty of High Treason against God and the King.*

The Rigour, Cruelty, and Injustice of this New erected Councel of Blood, or High Court of Justice, enforced the Low Countries to revolt and cast off the King of Spain.

Let us now examine whether in some one little Province or Island belonging to that vast Roman Empire: and in some mean petty fellowes (Natives of that Island) men even at home of obscure Birth, Breeding, and Fortunes; we cannot finde examples of Ambition Usurpation, and Tyranny, as high and transcendent, as bloody and destructive, as covetous and greedy, as any of the fore-recited pre-fidents: And (which is worst of all) carried on by those that call themselves Christians, nay Saints, (which is more than they vouchsafe to Saint Peter and

and the rest of the Apostles, though glorified Saints in the Church Triumphant) and such as in all their bloody, oppressing, cheating Designs (promoted by Perjury, Treachery, breach of Faith, Oaths, and publick Declarations) pretend to the singular favour, Providence and will of heaven, as confidently, as if they could shew Gods special Commission, to warrant Usurpation, Treason, Tyranny, and Thievery.

It is not unknown by what Artifices, frauds, falsified promises, Oaths, and Covenants, a party of *Antimonarchists, Schismatics, and Anabaptists* lurking in the Parliament fooled the people to contribute their blood and money towards the subduing of the King (and in him of themselves) and how by the same wayes and subtilties the said party in the two Houses (now combined openly, under the General Title of *Independents*) engaging and conspiring with the Officers of the Army and Souldiery expelled by armed force seven parts of eight of the House of Commons, leaving not above 43. or 44. of their own engaged party sitting, men enriched with publick spoys) and voting under the power of the Armies Commanders, whose commands are now become a law to the said sitting Members, as their Votes are become Laws to the Kingdome. In Obedience to their said Masters of the Army, The said remainder of Commons voted down the House of Lords (though an integral and principal Member of the Parliament of England, far antienter than the House of Commons, and having a power of Judicature to administer an Oath (which the House of Commons never had, nor pretended to have, until this time that they overflow their Bounds, and the whole Kingdome, under the protection of their Army) which prerogative of the

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House of Lords is clearly demonstrated by the House of Commons standing bare before them at all conferences, as the Grand Inquest doth before the Judges) because they rejected the Ordinance for Trial of the King. And *now these Dregs and Lees of the House of Commons, take upon them to be a compleat Parliament*: To enact and repeal Statutes; To subvert the Fundamental Government, Laws and Liberties of the Land; To pull up by the Roots without Legal proceedings) every mans private property and possession, and destroy his life: To burden the people with unsupportable, unheard of, unparliamentary Taxes, Impositions, Excise, Freequarter, buying of New Arms after the Countrey have been disarmed of their old Arms three times in one year; Pressings and Leavying of Souldiers, Sequestrations, Plundering of Houses and Horse, and many other oppressions, more than the *Turke, Russe, or Tartar* ever heard of: of all which our *Grandeess are free*, and lay them upon others as partially as they please, purposely to consume them. To make Religion but a stalking horse to their Designs, and the Ministers thereof but Hostlers to rub down, curry, and dress it for their riding; to whom they send Commands, what they

is for redress slighted. N stands for a Neuter, he is more indifferently rated, and upon hewn, may chance to be relieved. The letter P. signifies a perfect Parliamentarian. He favourably taxed, as he bears an inconsiderable part of the burden, and that they may the consume with Taxes and want, all such as do not concur with them in the height of illanies. The pretended Parliament, are now debating to raise the Monthly Tax to 6 lib. or to deprive every man of the third part of his Estate, both Real and Personal, intenance of their immortal Wars, and short lived Commonwealth. Besides Excise, Customs, Tonnage and Poundage, Freequarter, finding Arms and Horses, and the sale of Corporal Lands now in agitation. Whilest our Grandeess enrich all the Banks of Christendome with summes raised by publick Theft and Rapines.

shall,

shall, and shall not preach to the people; as if preaching were the Ordinance of man, not of God. At last by way of preparative to their machinations, they pass these following Votes.

1. *That all Supreme power is in the people.*

2. *That the Supreme Authority under them, is in the peoples Representatives, or delegates in Parliament assembled.* Meaning themselves (you may be sure) the Quintessence and Elixar of the House of Commons, extracted by those learned Chimicks, Doctour Fairfax, Doctour Cromwel, and the rest, graduated at that degraded University of Oxford. Here note they voted the Supreme power to be in the people, that they might use those Gules as Conduit pipes or Trunks to convey the Supreme Authority into themselves, the better to enslave the people; And tickle them, whilest they fasten about their necks the Iron yoke of a Military Oligarchy, wearing the Mask of a perpetual Parliament.

3. *That whatsoever the Commons in Parliament shall enact, shall have the power and force of an Act of Parliament, or Law, without the consent of the House of Lords, or the Kings Royal Assent; any statute, law custom or usage to the contrary notwithstanding* (they might have said all our statutes, laws, customes, &c. notwithstanding) This one vote hath more of *Dissolution* and more of *Usurpation* and *Innovation* in it, than any I yet ever read of; *This is universally Arbitrary, and layes the Ax to the root of all our Laws, Liberties, Lives, and properties at once.*

What these men will, they vote :

What they vote is Law.

Therefore what they will is Law.

4. *That to wage war, or to bear Arms against the Representative body of the People, or Parliament is high Treason.* By the Law all Treasons are committed against the King, his Crown and Dignity.

5. *That the King hath taken up Arms against this Parliament, and is therefore guilty of all the blood shed this War, and should expiate those crimes with his blood.* If the King were not guilty, these men are; And therefore they passed this Vote, *se defendendo*. Yet observe that herein they became Judges in their own cause, and forejudged his Majesty before his Trial, if that may be called a Trial, that was carried on by men, who were both Accusers, Prosecutors, parties and Judges; and had neither Law, president, formality of proceedings, nor any other foundation of Justice or Reason to warrant them, nor were delegated by any lawful Authority?

These Votes thus passed, and by this kinde of men, were the foundation upon which they built their great Engine to destroy the King and Kingly Government together with the Religion, Laws, Liberties, Lives, and properties of the people; all condemned in that deadly sentence given against the King) For having (as aforesaid) created (by their own Votes) themselves as absolute a power as they pleased and cast the people and all they have into that bottomless Chaos of their Arbitrary Domination: They erect an Extrajudicial, unpresidented High Court of Justice to Try (or rather to condemn without Trial) the King, consisting of 150. Commissioners, Souldiers, Parliament men, Trades men; the most violent, engaged and factious incendiaries of all the Antimonarchical faction: Amongst whom were many low con-

conditioned Mechanicks, and Banquerouts, whose Fortunes are since repaired out of the Kings Estate, and other publick Lands, Goods, and Offices, as a reward for that Royal Blood they spilt. The King the Fountain of Law, Justice, Mercy, Honour, War, and Peace; the Head of the Parliament, and Supreme Governour over all persons, and in all causes) thus violently removed; presently (as if the Mounds and banks of the Sea had been overturned) an impetuous inundation of bloody, thievish Tyranny and Oppression brake in upon us: So that no man can call his life, liberty, house, lands, goods, or any other his Rights, or Franchises his own, longer than the gracious aspect of some of our Grandees shine favourably upon him.

See Stat. Recognition
1 Jac. The Oaths of Allegiance, Obedience and Supremacy, and all our Law-books.

In the next place: contrary to their own Declarations of the 9. Feb. and 17. March 1648. Wherein they promise that in all things concerning the lives, liberties, and properties of the people, they will observe the known laws of the Land, with all things incident thereto) *They pass misbegotten Acts of Parliament, one of the 14. of May, another of the 17. of July, 1649. whereby* (in derogation and annihilation of that excellent Stat. 25 Ed. 3. Chap. 2. Ascertainning Treasons, and reducing them to a small number, and leaving nothing to the interpretation of the Judges, that the people might not be ensnared) *they exceeding by multiplying Treasons, bringing bare words as well as deeds within the compass of that offence: and making many duties to which the laws of God & the land, the Protestation & Covenant, the oaths of allegiance, obedience, & supremacy oblige us, to be high treason, & these new acts of treason penned in obscure, ambiguous terms, purposely to leave a latitude,*

This Stat. Ed. 3. c. 2. Johns against Strafford, the security of the people And the Stat. 1 Hen. 4. c. 10. Ed. 6. cap. 12. 1. Marie 1. 1. tifie and his ly comme

tude of Interpretation in (their own creatures) the Judges, that the People may be ensnared.

The King thus taken out of their way. They passe pretended Acts. 1. *To Disinherit his Children.* 2. *To abolish Kingly Government for ever.* 3. *To convert our ancient well-tempered Monarchy into that (which they call a Common-wealth, or Free-State ; although nothing be therein free but their lusts : nor hath it any form or face of Civil and just Government ; wherein a confused Multitude rule by their own Wills, without Law : and for their own benefit ; no consideration being had of the good and happinesse of the people in general.* 4. *They Constitute a Senate, or Council of State of 40 men (amongst which some Trades-men, Souldiers, illiterate Lawyers, Parliament-Members, men already engaged over head and eares in sin, therefore to be confided in) to these or any nine of these they entrust the Administration of this Utopian Common-wealth, and these they would have us believe (without telling us so) are the Keepers (or Gaolers) of the Liberties of England.*

Thesethings being but Introductions to the Usurpation of these Kinglings : and having been already shewed to the world by many pens. I content my self to give a cursory view of them, and haste to my intended task, to shew that this Usurped power is kept and administred by as wicked and violent policies, as it was gotten by.

The first endeavour of all Tyrannical Usurpers is, To lessen the number of their Enemies ; either by flustering

They have converted our ancient Monarchy into Free-state ; and tell us they are the rare. They tell us they have bestowed Liberty upon the people : but they and their faction only see the people. All the rest of the English Nation are annihilated, and reduced to nothing, that these fellows may become things : merciphers, ing only make them more accurate. And gross fals must not disputed list, left New of Parliament call reason.

flattering and deceiving them: or by violently extirpating and rooting them out. And such have been the attempts of our new *Cromwellian* Statists, ever since (without any calling from God or the people) they took upon them the Supreme Authority of the Nation; subverted our well-mixed Monarchy, and created themselves a Free-State

1. They endeavoured to sweeten and allure to act with them, as many of the Secured and Secluded Members, Ministers, and other Presbyterians, as they could, to the end that *ex post facto* being guilty of their sins, they might be engaged in one common defence, and go halves with them in their ignominy and punishment, though not in their power, profit, and preferments, in which the Godly will admit no Rivals, but (like their Patron the Devil) cry all's mine. But this Design failed for the most part.

1.
A Collusive
Accommoda-
tion.

2. Their second Endeavour was how to diminish the number of their Opposites, Royalists and Presbyterians, by a Massacre, for which purpose many Dark Lanthorns and Poniards were provided last Winter, 1649. But fame prevented this plot: which coming to be the common rumour of the Town, put them in mind of the danger, infamy, and hatred that would overwhelm them. So this was laid aside.

2.
An intended
Massacre.

At last they invented two other Engins, no less bloody then, and as effectual as a Massacre.

3. The Engagement is the first of these two Gins) which all persons are enjoined to subscribe by their Act 2 Jan. 1649. To be true to the Common-wealth of England, as it is now established, without a King, or House of Peeres. And this is obtruded under no lesse penalty, than, To be totally deprived of all Benefit

3.
The Engage-
ment.

Benefit of Law whatsoever. Now the Lawes of the Land being the only Conservators of our Lives, Liberties and Estates (without which Lawes all men have a like property to all things, and the strongest have right to all is posselt by the weaker; since the Law onely distinguisheth *Meum* and *Tuum*) what is this but to expose the Liberties of the Non-Engagers to false Imprisonments; our Estates to rapine, spoil, and injustice: and our Lives and Persons to wounds and murders, at the will and pleasure of such as will engage with our Usurpers: but especially at the pleasure of their own Souldiers: to whom (I conceive) this Outlawry was intended as an Alarm or Invitation to plunder and massacre the Non-Engagers, and to pay themselves their Arreares of which these Parliamennt men have cousened them) out of their Estates, and though the Souldiers were not so wicked as their Masters, yet we daily see many good Families in *England* despoiled of their Estates, for want of protection of the Lawes, brought to miserable beggery, rather than they will wrong their consciences by subscribing this damnable Engagement contrary to the Protestation and Covenant imposed by this Parliament, contrary to the known Law of this Land, which this Parliament hath declared to observe and keep in all things concerning the lives, liberties, and properties of the people, with all things incident thereto; contrary to this Parliaments reiterated Votes, that they would not change the Ancient Government, by a King, Lords and Commons. And contrary to the Oathes of Allegiance, Obedience, and Supremacy: whereby (and by the Stat. of Recognition, *i Jac.*) our *Allegiance* is tied onely
to

to the King, his Heirs and lawful Successors; from which no power on earth can absolve us, and so much we attest in the Oath of Supremacy. *Politicks* (Interpreter to our new State-puppet play) Numb. 19. from Sept. 19. to Sept. 26. out of the dictates of his Masters tells us, that in Answer to the Kings Act of oblivion granted, the Parliament intends to pass an Act of General pardon; for which they expect in future a General obedience and submission to the Government (you see though they will not be the Kings subjects, they will be his Apes) and in the beginning of the said Pamphlet, *Politicks* saith, That Protection implies obedience, otherwise they may be handled as publick Enemies and Out-laws, and ought to be destroyed as Traitors. Here you have the end to which this general pardon is intended; it is but a shooing-horn to draw on the utmost penalty upon Non-engagers, appointed by the said pretended Act 2. Jan. 1649. to weed them out of this good Land, that the Saints only may enjoy the earth and the fulness thereof; to which purpose all their new coyned Acts and Laws are directed. The Scripture points forth these kind of men, when it saith, *The Mercies of the wicked are cruel*. The sum of all is, If we will not acknowledge Allegiance to these Mushromes, we shall be Traitors without Allegiance (a Treason never yet heard of in any Law) If we will acknowledge Allegiance, we put our selves in a capacity to be Traitors, when they shall please to make us such. But let them know, That we are all Englishmen, Free-born alike, under the protection of an ancient, legal Monarchy, to which we owe Allegiance; and how we come to forfeit that legal Protection, our settled Laws

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and Government ; and be subjected to a New , unknown protection obtruded upon us by a company of upstarts (Mushromes of Majesty, so mean in birth and breeding (for the most part) that the place of a Constable equalls the highest of their education) imposing what Laws and conditions upon us they please ; I would be glad to hear without being hindered by Guns, Drums, High Courts of Justice , and other Instruments of Violence and Murther. But the greatest Mystery in this cheat is, That our Self-created Supremists , having voted the original power to be in the people, and but a derivative Authority to be in themselves as the Representative of the people, should notwithstanding so yolk their Sovereign Lord the people , and make them pay Allegiance to their own Delegates (the eighth part of a House of Commons) under the penalty unless they subscribe as the far major part have not) of out-lawing and depriving all the people of this Land of all benefit of the Laws they were born to ; and consequently of annihilating and making them no longer a Nation or people. As if they were meer Salvages , newly conquered , collected and formed into a politick body or Commonwealth , and endowed with Laws newly invented by the Novice Statists. But the unlawfulness of the said Engagement with the Injustice of the Self-created power that obtrudeth it hath been handled by many good pens , especially by the *Cheshire* and *Lancashire* Ministers in their plea for Non-subscribers. Therefore I pass on to my principal scope ; *The second Engine appointed to root out all such as are of a different party , the High Court of Justice.* A formidable Monster, upon which no pen (that I know of) hath yet adventured,

4. In treating of the High Court of Justice, I must consider, 1. *By what persons and Authority* this new erected unprebided Court is constituted? 2. *Of what persons it is constituted?* 3. *The way and manner of their proceedings?* What Formalities and Laws they observe therein? How suitable to the known Laws of the Land, and the Parliaments Declarations, Protections and Covenant they are? 4. *To what end this Court is constituted?*

1. *The Persons constituting* this extrajudicial Court are the present pretended Parliament, consisting of forty or fifty thriving Commons only, who conspired with Cromwel and the Army to expel seven parts of eighth of their Fellow-Members, without any cause shewn, abolished the House of Peers, erected this High Court of Justice (*in nature of a Court Martial*) to murder the King, abolished Kingly Government, turned it into a thing they call a *Free State*, disinherited the Royal Family, and now usurp to themselves (*without any calling from God or the People*) more than a Regal, Legal or Parliamentary Authority, wherewith they have subverted the Fundamental Government, Religion, Laws, Liberties and Property of the Nation, and envasallised and enslaved them to their Arbitrary Domination; the Authority by which they erect this extrajudicial Court is, *The usurped, Legislative power*; by colour of which they passed an Act dated 26. March 1650. establishing the said High Court of Justice. Yet their own creature Master St. Johns, in his Argument against the E. of Strafford (in a Book called Speeches and Passages of this great and happy Parliament, printed by William Cooke, 1641. pag. 24.) saith, *The Parliament is the Representative of the whole King-*

dome, wherein the King as head, The Lords are the more Noble, and the Commons the other Members, are knit together as one body politick; The Laws are the Arteries and Ligaments that hold the body together. (And a little after) *Its Treason to embesel a Judicial Record*, Strafford swept them all away. *Its Treason to counterfeit a 20 s. peece*; here is a counterfeiting of Law (so in these counterfeit new Acts) we can call neither the counterfeit nor true one our own. *Its treason to counterfeit the great Seal for an acre of land*, no property hereby is left to any land at all (no more is there by the votes and practise of our new Supremists (thus far Mr. St. Johns.) *But that the Parliament doth necessarily consist of the King and the two Houses assembled by his Writ, & can pass no Act without their joint consent.* See the preambles of all our Statutes, all our Parliament Records, all our Law books, *Modus tenendi Parliamentum*. Hackwells manner of passing Bills. Sir Tho. Smith *de Repub. Anglorum. Cambdeni Britannia*. All our Historians, Politicians, and the uninterrupted practise of all Ages. That it is now, lately otherwise practised, is not by any Law of the Land, but by the will of lawless power and Rebellion, that hath cancelled all our Laws, Liberties and Properties, and subverted our Fundamental Government, and disfranchised and disinherited the whole Nation. Yet Master St. Johns in his said Argument against *Strafford*, pag. 38. was then of opinion, *That to subvert the Laws and Government, and make a Kingdome no Kingdome, was Treason at the Common Law.* This Act 26. Mar. 1650. is a new modelled Commission of Oyer and Terminer; and all the people of the Land, are by the consequence thereof disfranchised and proscribed. The illegality and tyranny

ranny thereof, they have introduced, who in this Parliament so zealously complained against the Court of the President and Counsel of *Tork*, or of the North, as an intollerable grievance (notwithstanding it had been of as long continuance as from 41 H. 8.) as appears by a worthy *Members Speech or Argument against it* (in the said Book of Speeches and Passages p. 409. *made by order of the House of Commons in April 1649.* I find not one Exception there made against the Court of *Tork*, to which this upstart High Court is not more liable than it. 1. The Commissioners of this High Court are not appointed *to enquire, per Sacramentum proborum & legalium hominum*, that is, by Juries; as by *Magna Charta*, and above 30. Statutes confirming it, all Commissions ought to run. 2. They are not appointed (nor sworn) *to hear and determine, Secundum Leges Angliæ*, according to the known Laws (as they ought to be) but according to certain Articles and powers given in the said Act 26. *March*, 1650. 3. The said Act 26 *March* leaves a dangerous latitude to the interpretation and discretion of the Commissioners (contrary to what is done in the Act 25 *Edw.* 3. chap. 2.) namely; It hath *one Clause enabling them to inflict upon Offenders such punishment, either by death or otherwise corporally, as the said Commissioners, or the major part of them present shall judge to appertain to Justice.* This leaves it in the breasts of the Commissioners (without any Law or rule to walk by) to inflict what torments and ignominious punishments they please, although not used in our Nation; and *arbitrary corporal pains are proper to slaves, not to subjects.* Here (after the loss of all but their bodies) the people may see their bodies subject to the lawless wills of

our Grandees. And by another clause, this Act im-
 powereth the Commissioners. *To examine witnesses up-
 on oath, or otherwise, if need be.* This word (*or otherwise,
 &c.*) gives them power to examine witnesses with-
 out oath (if they cannot procure witnesses so far the
 sons of Belial, and cauterised in conscience as to ad-
 venture upon an oath) even in case of life and death,
 and mutilation of members; contrary to the current
 of all our Lawes, and practise of all our Courts of
 Law, and of all Nations. See *Stat. 1 Edw. VI. chap.*
12. 5 Edw. VI. chap. 11. Cooks 3. Inst. p. .24, 25, 26.
Dent. 17.6. Ex ore duorum vel trium peribit qui occide-
tur. Deut. 17.6. Matth. 18.16. John 18.23. 2 Cor. 13.
1. Heb. 10.28. This is the most arbitrary and destroy-
 ing liberty that ever was given to Judges; And such
 as none but professed thieves and murderers will ac-
 cept or make use of. The Scripture saith, *An oath is the*
end of controversy between man and man. How then can
they end and determine a controversie without oath?
 But the end of all controversies before this Butcher-
 row of Judges, is cutting of throats., and confiscation
 of estates. And by the same clause of the said Act (*To*
examine witnesses) they may, and (*I hear*) do examine
witnesses clandestinely, and proceed upon bare Depo-
 sitions read in Court, whereas they ought to produce
 the witnesses face to face in open Court, and there
 swear them, that the party accused may interrogate
 them, and examine the circumstances, and whether they
 contradict themselves, or one another, for clearing the
 Evidence? And whether they be lawful witnesses or
 no? Nay (*I hear*) they do privately suborn and en-
 gage witnesses without oath. And then produce them
 to

the Stat. 5 Ed.
 chap. 11. &
 Cooks 2. Inst.
 p. 26.

to swear what they have formerly related only : and if they scruple at an oath; punish them for mis-informing the State. 4. That I may make some more use of the aforesaid Members words, *Whether the King, or a prevailing Party usurping his Kingly power, may canton out a part of his Kingdom (or cull and mark out for slaughter some principal men, and deny them the benefit of Law, in order thereto, as these Judges do) to be tried by special Commission, since the whole Kingdom is under the known laws and Courts established at Westminster?* It should seem by this Parliaments eager complaint against the special Commission of York, this Parliament hath determined this question in the negative already (whatsoever their present practise to carry on their Design is) See Stat. 17. Car. 1. against the Star-Chamber. To what purpose serve those Statutes of *Magna Charta*, and the *Petition of Right*, if men may be fined and imprisoned (nay murdered) without Law, according to the discretion of Commissioners? This discretion is the quick-sand that hath swallowed our Properties & Liberties (but is now ready to swallow our carcases.) Thus far that Gentleman, Whose words then carried the Parliamentary stamp upon them. Let me add some more exceptions of my own against this High Court of Injustice. 5 *Souldiers of the Army are appointed by the Act 26 March, to be assistant to the Commissioners*, contrary to the peaceable proceedings of the Law, which never makes use of any but Civil Magistrates and Officers of the Law. See Stat. 7 Ed. I. 2 Ed. III. chap. 3. 7. R. 2. chap. 13. 6. *And contrary to the old oath which all Judges ought to take, in these words. You shall swear well and faithfully to serve the King and people, in the Office of Justice, &c.* And

And that to what estate and condition they be come before you in the Sessions with force and arms, against the peace, against the Statute thereof made, to disturb the Execution of the Common Laws, or to menace the people, that you arrest their bodies, &c. Stat. 18 Ed. 3. in An. Dom. 1344. p. 144. Poultons Book of Stat. at large. But the oath appointed for these Commissioners to take, is not penned in terms of indifferency, nor doth any waies oblige them to the people, 26. Mar. 1550. (viz.) You shall swear well and truly according to the best of your skill and knowledge, to execute the several powers given you by this Act (not well and lawfully to serve the people.) Besides, they swear to execute the several powers given (not to do Justice according to the Laws. Now the Laws are the only rules of Justice, by which we distinguish crooked from strait, true from false, right from wrong. This is not the work these Judges are packed for, but to execute Acts of power and will. But powers are often usurped, tyrannical, illegal and unjust: So are these. *Injuria est quod contra legem fit.* 7. How can the House of Commons (if it were full and free) constitute a new unprecedented Court of Justice, nominate and ordain Judges, and enable them to administer Oaths, having never had, nor so much as pretended to have any power to judge, to nominate Judges, or to administer an Oath; as having never been more than the Grand Enquest of the Kingdom, humbly to present to His Majesty in a petitionary way, the grievances of the people? *Nemo dat quod non habet.* 8. Suppose the House of Commons had power of Judicature, delegated to them from the people as their Representative? *Delegati non possunt substituere Delegatos, & Protestata m. sibi concreditam, in alios transferre.*

Delegates

legates cannot make subdelegates, and transfer their trust to others. See Col. *Andrews* 3. Answers given into this High Court, for his defence. Printed at the latter end hereof.

2. My second consideration will be, *Of what Persons delegated or Commissioned, this Court consisteth?* The pretended Act. 26. March 1650. names 25. Commissioners, all which (for their better credit) it enacteth Esquires, amongst whom are 4. or 5. that have professed the Law, (as farre as wearing a Lawyers Gown comes to) but were better known by their leisure then by their Law; untill by adhering to our prevailing Schismatics, in subverting our Laws, they seem to be eminent Lawyers. Of *Keeble* see the Triall of L. Collonel *John Lilburn*, first and second Part. *Steel* cited expired Statutes at *Winchester* against Captain *Burley*. The rest are (for the most part) poor ignorant Trades men, some so young they are but lately out of their Apprentiships, others Broken Trades-men that have compounded with their Creditors, some of vild and base professions; One or two of these Wolvish Saints (I hear) have with some difficulty escaped the Gallowes for Man-slaying: *William Wibeard* Esquier is a Rope-seller: this employment may happily help him to the Hangmans Custom. *William Pemoier* Esquire was heretofore an Ape-carrier, Cherry-lickom or Mountredinctido. *Cook* a Vintner at the Bear at the Bridge-foot, he keeps a vaulting-School for our sanctified Grandees, and their Ladies of the Game. If the House of Commons had power to make Judges (which I have disproved) yet, *Ex quovis ligno non fit Mercurius*. They must name such Persons as may be competent Judges. And therefore

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must

must not choose: 1. Ignorant men. 2. Nor such as the Law calls, *Viles Personas*, men base or contemptible for their Persons or Sordide callings; Mechanicks of the lowest rank. 3. Persons of Scandalous life and conversations. 4. Not Banquerouts and Indigent Persons. *Neceſſitas cogit ad turpia*. 5. Not partiall and preingaged Persons, chosen to suppress another party. As these Commissioners are engaged to the present power to suppress all others. 6. Nor such as *Schismatically or Heretically affected*, are seasoned with such *Doctrines and Principles*, as neither agree with the Duties of a good Christian, a good Common-wealths man, nor a good Judge. Which two last Objections not only these Commissioners, but the pretended Parliament that commissioned them are apparently guilty of, as being all of the Independent Faction conspiring to rob and rout out all other Parties: Royallists, Presbyterians and Levellers: For which purpose this New Tribunal or Inquisition is set up. *Independency being a meer complication and Syncretismus*, or rather a Sink and Common Sewer of all Errours, Heresies, Blasphemies, and Schismes, (though they peevishly differ in some inconsiderable Tenents) yet having one Generall End or scope at which they all chiefly aime (*viz.*) power, preferment, profit, and the suppression of the Truth and Magistracy, they have likewise some common principles to soader them together, which they use as a Meanes conducting to that Generall End. Some few whereof I will here set down for my Readers satisfaction. 1. To tolerate no King nor Magistrate Superior to themselves, as Being a Tyranny or Bondage over the Christian Liberty of the Saints and Kingdom of Christ. Because they know no Christian Magistrate can tolerate them, being (by the *Genius* of their Sect) enemies

enemies to all Civil Societies, whether Monarchicall, Aristocraticall, Democraticall or Mixed; as the Kingdom of England was before these men destroyed it. Besides their common Doctrine, *That they are appointed to break the powers of the Earth to pieces, To levell the hills and fill up the vallies, That they are called, To bruise the Nations with a rod of Iron, and break them in pieces like a Potters vessell:* Which they have done in *England*, and threaten the like in *France, Germany, &c.* whereof, their Pulpits and discourses sound. Observe *their Practises in the Low Countries.* Where having by their spies and Emisaries, found out some Burgers of the same humour with themselves; They propagated their Doctrine so far; as to endeavour to strike the Aristocraticall Members out of that Common-wealth by abetting some of the States Provinciall to lessen (and so to abolish by degrees) The Lords States Generall (the Optimates of that State) To ruine the Prince of *Orange*, to whose Family they owe their Liberty; *To dissolve the Generall Union of the said United Provinces, and so take in pieces the whole Frame of that Republick.* To say nothing of their Insolencies in fighting and killing their men, because the Belgike Lion will not strike saile to their Crosse and Harpe; and in blowing up the Antelope in Helversluce: Which shews what good Neighbours *Holland*, and other Parts, are like to have of the New State of *England* and *Ireland* (when they have made themselves intire by the purchase of *Scotland*) that is born (like our English *Richard III.*) with Teeth in its head; and snappeth at its Neighbours before it be out of its Swadling clouts. This is the cause that *Cromwell*, before he set saile for *Ireland*, caused his Journey-

men, the pretended Parliament. To passe an Act for Tolleration of all Errors, Heresies and Schismes, under the Notion of Liberty of Conscience, and Ease for Tender Consciences. 2. Their second Principle is, *That the Good things of this World belong onely to the Saints (that is, Themselves) all others being usurpers thereof: and therefore they may rob, plunder, sequester, extort, cheat and confiscate (by illegal Laws of their own making, by extrajudicial Courts and partial Judges of their own constituting) other mens goods and estates, upon as good Title as the Jews spoyled the Egyptians, or expelled the Canaanites.* 3. Their third Principle. *That the Spirit (which sanctifies and illuminates these men) in every particular man blowes when and where it will, sometimes this way, sometimes that way, often contrary waies: And therefore they can make no profession of any certain Rule of Doctrine or Discipline, because they know not which way the Spirit will inspire.* For this reason they are still pulling down old and setting up New Doctrines, as the Nomades do cottages, onely constant in unconstancy. They professe their consciences are the Rule and Sym-boll both of their Faith and Doctrine, by this Leaden Lesbian Rule they interpret, and to this they conform the Scriptures; not their Consciences to the Scriptures; setting the Sun-Dyall by the clock; not the clock by the Sun-Dyall. That every man must pray according to the Dictates of his Private Spirit; They reject the Lords Prayer, for fear of quenching the Spirit. *When they break their Faith, Articles, Promises, Declarations and Covenant; they Alleage, the Spirit is the Author thereof.* When Cromwell (contrary to his vowes and Protestations made to the King) kept him close Prisoner in Carisbrook Castle; He affirmed *the Spirit would not let him keep his word.* When, contrary

contrary to the Publick Faith, they Murdered Him: they pretended: *They could not resist the Motions of the Spirit. Sua cuique Deus fit dira libido.* This Hobgoblin serves all turnes. 4. Their fourth Principle is, *That they may commit any sin, and retain their Sanctity in the very Act of sinning: For what is sinfull in other men, is not so in the Saints; who may commit any crime against the Law of God, and yet it cannot be imputed to them for sin; Beacale they know in their Consciences what they do.* So tender and delicate are their Consciences, *That they are capable of any Offence against their Neighbour, without breach of Justice or Charity.* A righteous man is a Law to himself. 5. Their fift Principle is, *That 7. make a Church: although men, women and children, and that this Church is Independent upon any other.* The Anabaptists (though they neither professe to follow Paul nor Cephaz) yet declare themselves to be some of Cromwells Church, some of John Goodwins, some of Kiffins, some of Paticences, and some of Carters Church. 6. Their sixt Independent Principle is, *That if a man be questioned for any crime, though his Judges have neither competent witnesses, proofs nor Evidence of his guiltinesse, yet if they think in their Consciences he his guilty; they may condemn him out of the Testimony of their own Private Consciences.* Is it not fit men so Principled should be Judges and Jury too; and condemn men by inspiration? So Colonel Andrews and Sir John Gell were condemned; for Bernard and Pits (witnesses against them) were apparently suborned by Bradshaw and Sir Henry Mildmay against them, and forsworn in the same cause; and good proof offered to the Court, that they were both Flagitious men, of scandalous life and conversation. The letter (supposed to be sent by Andrews to Gell) was delivered to
Bradshaw,

Bradshaw, whereof *Bradshaw* sent a Copy onely to *Gell* at 10. of the clock at night; and had a warrant then ready to arrest *Gell*, which was done earely next morning before he could conveniently discover it: Yet was *Gell* sentenced for Misprision of High Treason. See Sir *John Gells* case stated August, 1650. with Colonel *Andrews* Attestation (in his behalf) under his hand a little before his death. And though Sir *John* was Impeached and Mr. Attorney prosecuted him onely for Misprision; yet had he much ado to keep that bloud-thirsty, old cur *Keeble* from taking a leap at his throat, and giving Judgement against him for High Treason. So for want of Law Sir *John* had like to be hanged by Inspiration and Instinct of the Spirit. He that will see more of the Independent Tenets, Let him read *Cl. Salmasius* chapter 10. *Defensionis Regia, Elenchus Motuum nuperorum in Anglia*. And the History of Independency first and second part. These 6. I have selected, that by comparing their Doctrine with their daily Practise, the Reader may perceive what pious Christians, good Patriots, and upright Judges, these engaged, Independent Commissioners of the High Court of Justice are like to prove. The builders of this New Common-wealth or Babel, hold forth to the People, Justice and Liberty, as their Motto: as if those excellent gifts had never received their birth, nor been so much as shewen to the People untill they murdered the King, and stepped into his Throne. But how righteous a *Free-State* or Common-wealth is this like to be? And how well are the People therein likely to be instructed in the waies of Righteousnesse, Justice and Charity, and improved in good life and conversation, by men so principled as aforesaid, Let the

the world judge. Especially when they observe, That our New Statists have enacted in the said pretended Act. 2. *January, 1649.* enjoining the Engagement, That whosoever will promise Truth and fidelity to them by subscribing the Engagement may deal falsely and fraudulently with all the world besides. And break all Bonds, Assurances and Contracts made with Non-engagers, concerning their Estates; and pay their Debts by pleading in Bar of all Actions, That the complaint hath not taken the Engagement: This is to rob the Egyptians of the good things of this world, This is to break their Faith by the Motions of the Spirit, This is to cheat and rob their Neighbours without breach of Charity or Justice, and without imputation of Sin according to their afore said Tenets.

3. I am come now to consider in the third place, *The way and Manner of their proceedings*; How consonant they are to the usuall proceedings of our known Lawes, and Legall Courts of Judicature; (the best Inheritance of all Freeman) whereof see Colonel *Andrews* 3. Answers in his Defence given into the said High Court, herewith printed.

1. The first course they commonly take is; To break open mens Houses, Studies, Chests, &c. and seise their Papers; and thereby hunt for Matter of Charge against them: And then to examine them against themselves, upon the said Papers, contrary to *Magna Charta* which saith, *Nemo tenetur prodere se- ipsum.* And contrary to the Doctrine of Christianity, which forbids a man to destroy his own life, or be, *Felo de se*, as many men unwittingly do, who answer to captious, ensnaring questions. When that tempting question

question was put to Christ; *Art thou the King of the Jews?* He returned no other Answer then *Thou sayest it: Why askest thou me?* Ask them that heard me, That is, Ask witnesses. It was objected against the Oath *ex Officio*, That it was High Injustice to examine a man against himself: Because his Answers may only serve to condemn, but not to acquit him.

2. They usually break open houses with Souldiers, at all houres of the night, pulling men out of their beds with great violence and Terrour, and so carry them away, under pretence whereof Robberies and Murders have been committed, Whereas by the Stat. 1. Ed. VI. chap. 12. and 5. and 6. Ed. VI. chap. 11. A man ought not to be accused of High Treason but to one of the Kings Counsel; or to one of the Kings Justices of the Assize; or to one of the Kings Justices of the Peace being of the *Quorum*: or to 2. Justices of the Peace where the Offence is committed. *Cooks 3. Instit. chap. High Treason, pag. 26. 27, 28.*

3. They Commit men to Prison without any Accusation or Accusor made known, and during pleasure: and detain them in Prison many yeares together without any Legall proceedings or Charge against them; sharing their Estates, Offices and Revenues (by Sequestrations and Suspensions of the Profits) amongst themselves; without any Crime objected: And so leave them to starve, rot and dye in nasty Gaoles for want of Maintenance, under the cruelty of covetous and mercilesse Gaolers, whom they bear out (for mony) in all their Extortions. And being thus imprisoned and wounded with the displeasure of the State, no man dares adventure, upon any security, to lend him money for fear of incurring the disfavour
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of the State, and a Note of Malignancy, whereby their Prisons are become private Slaughter-houses, as well as their Courts Publick shambles of Injustice. Prisoners in the Tower of London (To which prison no Goale-delivery belongs) were alwaies wont in the time of (*that supposed Tyrant*) King Charles I. and his Predecessors, to have allowance from the King, according to their severall degrees; As 5l. a weeke for an Esquire, &c. although the King deprived them of no part of their Estates untill conviction, and this Maintenance was provided for them by the Lieutenant of the Tower; and in respect of his care and paines in procuring it he had Fees, and not otherwise, though now they continue and encrease the said Fees; the cause being taken away the effect ceaseth not. But these men now in power, after they have Committed men and robbed them of their Estates, without cause shewen, are so far from giving them any allowance to feed them; that they shut them up close Prisoners in unwholsome Chambers, denying them the Liberty of the Tower, and the benefit of fresh Aire (the Cameleons Diet) for their health, and resort of friends, for their accommodation. And that they may be sure to *deprive them of all legall meanes by habeas corpus to recover their liberties*; They Commit men by *illegall warrants* not expressing any particular Offence or cause for their Commitment: so that it is impossible for the keeper of the prison to obey the *habeas corpus*, which is directed to him in these words: *Præcipimus tibi quod corpus A. B. unâ cum causa detentionis suæ, habeas coram nobis, &c. ad recipiendam ea quæ curia nostra, &c.* Whereupon the Gaoler or Sheriff is to bring his Prisoner to the Bar, and tender his *mittimus* to the Court,

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Witness about 3000. Scottish Prisoners of War starved to death at Durham: where they ate one another for hunger. These were taken at the battle of Dunbar an. 1650. 3. Sept. and many hundred Prisoners have been murdered in Gaoles, with hunger, cold, nastiness and contagion, after they have been robbed of their Estates and no Crime laid to their Charge: this is become a daily practise.

shewing the particular cause of his Imprisonment, that the Court may judge whether it be Legall, or no. *Dolus versatur in Generalibus*. In the Acts of the Apostles, chap. 25. vers. 26, 27. *Festus* thought it unreasonable to send *Paul* a prisoner to *Cesar* (to whom he had appealed) and not withall to signifie the Crimes laid to his Charge. See *Cooks* 2. Instit. fol. 591.

4. Their usuall Course of *practising and suborning witnesses, tempting them with hopes and terrifying them with fears*, is so notorious; That it is known the Counsell of State have hundreds of *Spies and Intelligencers, Affidavit-men and Knights of the Post*, swarming over all England as Lice and Frogs did in Egypt: and have both *Pensions and set rates for every Pole brought in*: So that now the whole Nation is proscribed, and every mans head set to sale, and made a staple commodity, (far beyond the definite Proscriptions of *Silla* and the *Triumvirate* aforesaid) These Sons of *Belial* are sent forth to compass the earth seeking whom they may devour. These, (with the Liberty of Priviledged Spies) speak bold language to draw other men into danger: and plot conspiracies, which themselves detect, and are rewarded like Decoy Duckes for their paines. Of this sort are *Bernard* and *Pits* set no work to betray *Gell* and *Andrewes*, as aforesaid. For which *Bernard* had 300l. and a Troop of horse conferred upon him. *Johnson* that falsly accused Sir *Robert Sherly*, and *Colonel Egerton* for their charity in relieving his wants, is another; *Varney* is a Fourth. So well are they fitted with these Sonnes of *Belial*, that no *Naboth* can keep his Vineyard, if a Grandee cast a covetous eye upon it; they can prove what they list. Nay it is usuall for our Grandees to molest one man with examining

examining him 20. or 30. severall times, against one Prisoner, and upon one point, to distract his memory, and not to let him be quiet untill he perceive he must speak what their questions and discourses lead him to, to redeem himself from vexation. To say nothing of their Menaces, To torture men if they will not confess, what they impudently pretend is already discovered by other meanes: And their insinuating into the Affections of witnesses, by asking them, Whether the State doth not owe them money? And why they do not use fitting meanes and opportunities to recover it? And why they do not make meanes for some beneficiall employment?

5. In *Magna Charta*, chap. 29. it is enacted, *That no Freeman shall be taken or imprisoned; or be disseised of his Free-hold or Liberties or Free-Customes, or be outlawed or exiled, or any otherwise destroyed; nor we will not passe upon him or condemn him, but by lawfull Judgement of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man, Justice or Right.* See Statute 2. Edward III. chap. 8. 5. Ed. III. chap. 9. 14. Ed. III. chap. 14. 25. Ed. III. chap. 4. 11. R. II. chap. 10. Pet. of Right. 3. Car. I. 10. Edward IV. fol. 6. Dier folio 104. Cook lib. 5. folio 6. lib. 10. folio 74. lib. 11. folio 99. Regist. folio 86. Where note the word (*Peers*) signifies, that no man is to be condemned or destroyed, but by the lawfull verdict of a *Jury of 12. sworn men of the Neighbourhood* where the Fact was committed; because (in probability) Neighbours may have best cognisance of the Fact, and of the life and conversation of the Party Accused. And these only are *Competent Judges of Matter of Fact*; and in many cases of Matter of Law too, if they will take the

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knowledge

knowledge of the Law upon them. Neither can this Petty Jury of 12. men go upon the Prisoner unlesse a *Bill of Enditement* containing the whole Matter of charge be first found in open Court by a Grande Jury or Enquest of sworn men; who are to enquire of the Fact upon the Oathes of two lawfull witnesses (at least) to every material Point of the Enditement; and then, when the Grande Enquest are all agreed, the Foreman endorfeth upon the back of the Bill (*Billa vera*) and then presents it in open Court, as the Information for the King of the whole Enqueste: otherwise the Enditement is quasht, and null. Cookes 3. Instit. chapter High Treason and Petty Treason. And whereas the Statute saith, (but by his Peeres, or by the Law of the Land) *Lex Terra*, signifies, The Antient Customes of the Land; Amongst which Fundamentall Customes; Trialls by Juries hold a principall place. And when the King Charles I. accused this Parliament, That they disposed of the Subjects Lives and Fortunes by their votes, contrary to the known Laws of the Land, This Parliament in their Remonstrance, Sept. 1642. (1. Part of the Book of Declarations fol. 693. highly resented it. And *Magna Charta* being nothing else but an Affirmation of the Common Law, inserted this Clause (*or by the Law of the Land*) as a speciall caution, not to annihilate or frustrate (no; not so much as tacitely, or by preterition) any of the said Fundamentall Lawes or Customes; nor any other particular lawfull Customes, which are not one and the same in all parts of England: Witnesse the Custom of *Gavelkind* in Kent. I have told you what our known antient Legal Courts of Justice do. And I must tell you that *Legal formes and set Modes of proceedings* are

so essentiall unto Justice, that without them we can not measure the Rectitude of Obliquity of Justice or Injustice: where they do not chalk forth the way, both Judges, Lawyers, Officers and Attorneys will tread what subtle, obscure pathes they please, usurp an Arbitrary power and latitude to prevaricate; and so far corrupt and work the Law of their sense, that they will rather *Leges dare*, then *Leges dicere*, so that what is Law in one mans case, shall not be so in another mans, They will so intricate and intangle causes; that every case shall be *Causa pro amico*; as Civilians call it; when upon full hearing, The Merits of the cause appear so equally, and undistinguishable on both parties; that the Judge may (according to his discretion) look upon the Merits of the Persons onely: and give the cause; *Pauperiori, via Charitatis*, or *digniori, ratione virtutis*. Justice not fixed by Formalities, will become such a vagrant, that no man shall know where to find her. Let us now see what our new shambles, our upstart High Court doth. Which in this work of Reformation and Destruction, so much abhorres Superstition and Ceremonies, and sticks so close to a Summary way of proceeding, that they have not onely stripped, but flead her: as their Masters the Parliament not onely fleece but flea the People. Inlieu of a Bill of presentment, by a Grande Enquest, the pretended Parliament or Counsell of State, send a List of such Persons names, as they have proscribed, And set a *Nigrum Theta* upon, (as men dangerous to their designed interest) to the Masters of their Slaughterhouse, The said High Court, together with such Depositions as they have taken in corners, against the Prisoners: and this is such a forejudging of them that the said Court neither will nor dare acquite, whom
their

their Masters and Pay-Masters have precondemned. Next *Articles of Impeachment in nature of a charge* are drawn up against the Prisoner (although such Articles are nothing in Law, which regards onely a Bill of Inditement) Then the Prisoner (after a close Imprisonment for he knows not what) upon two daies warning is led to the Bar; where the first work is to dazle his eyes, amaze and distract his Judgement and Memory with the terror of their Souldiers, the Numerousnesse, high affronting words and looks of his Judges; having thus mortified the Prisoner, he is commanded to hear his charge read: and bid *plead to it, Guilty, or not Guilty.* If he own their Jurisdiction and plead the said Generall Plea, they have him where they would have him: they never ask him; how he will be tried, Whether by God and his Country? For God hath no hand in these proceedings, nor amongst such Judges: and this rod of Iron is provided to bruise his Country, as well as himself. Lieutenant *Colonel Lilbornes* Trial hath taught them That it is an easier Matter for them to pack a Butcher-Rowe of confiding, partiall Judges, then a Jury; who are liable to be challenged, if suspected of partiality. When *Colonel Andrewes* claimed to be tried legally as a Freeman by a Jury, and vouched Great Charter, and many other Statutes, (whereof see his aforesaid 3. Answers) that sneaking Bloud-sucker, illiterate *Keeble* answered, Those Statutes were out of date now, (meaning, They were taken away by conquest.) So that this *Shamble Rowe of Judges*, take upon them to be, both *Judges of the Law*, (without acknowledging the *Fundamentall Lawes of the Land*, or taking any Oath of Indifferency to the People) *Triors of the Fact*, or *Furates*

Furates of life and death (without being sworn to find according to Evidence) as well as Parties and Prosecutors. Theeves upon the high way may as justly arraign a True man before them, because he brought no more Mony in his purse, offered to draw his sword and hid his mony about him in contempt of their Jurisdiction and Authority; and condemn him upon such a Mock Triall and Mummery or Enterlude of Justice, as these Fellows. If they allow him Counsel, his Counsel must apprehend the mindes of his Judges, at his perill; and not be so faithfull and diligent as to help his client in earnest; Lest the Counsel of State, or some other power (whose will is a Law) interpose, and banish him 20. miles from London; as they did Master Sprat, Sir John Gells Solicitor, before Sir Johns businesse was ended; whereby Sir John was left destitute of meanes to follow his businesse, himself being Close Prisoner. If they permit any witnesse to speak on the prisoners part, He comes at his perill: Sir John Gells first witnesse was so baffled in Court, that the rest stole away and durst not appear. I have not heard whether they give any Copy of their Aricles of Impeachment to the Prisoner, (for they cover all their doings with such a Plaguy Egyptian Darknesse, that we cannot see a glimpse of light) or whether they go a Starre Chamber way, and make him Answer Ore tenus, and ex tempore for his life and Estate. But if they give him any Copy, or any time to answer, it is not above four or five daies or a week, nor do they allow him Counsell or any other Clearing of the way to his defence, untill he have ensnared himself by owning their Jurisdiction, and pleaded the Generall Plea, Not Guilty. If he pleade not an Issuable Plea, and yield to their Jurisdiction, quitting all benefit of the Law and Legall proceedings; the Razor is at his throat, they

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they thirst after his Bloud; and they presently sentence him guilty of contumacy and take it pro confesso. And if he do submit and plead: His plea will have the operation but of a Psalm of Mercy, prolonging his life but for a short time, in the interim Keeble and his Court plays with him as a Cat with a Mouse, and then devours him. For no man is sent to this Court to be Tried, but to be condemned. *In hac arena dimicatur sine missione.* Herein they shew themselves much more Tyrannous and bloody then the Duke *D'Alva* when he erected his said Counsel of Troubles, called *Concilium Sanguinis*, or the Bloody conventicle; as this will shortly be. For saith Strada Declar. 1. lib. 7. *Procurator regius menses 4. Conficienda Accusationi accipiens sibi; 5. Concedebat ad Defensionem regis (Egmontio, Hornano, &c.)* The Kings Atturney took 4. Moneths time to draw up the charge or accusation, and gave 5. Montis time to the Respondents to make their defence. And had he given less then 5. Moneths time, To Instruct Countel, Pen their Answers, produce and summon witesses, inquire into the lives and conversation of their Accusors, his feet had been swift to shed bloud. *Nulla unquam de morte hominis cunctatio longa est,* But our Inquisitors take whole yeares to themselves to hunt for Matter of Accusation, and hire and engage witnesses against men kept in ignorance and want with close Imprisonment: and allow not them so many daies to make their Defence. All manner of Accusors and witnesses, though apparently suborned and forsworn in the same cause, and proofes without exceptions offered to the Court that they are of infamous life and conversation, are in this Court (the Object of whose desires are Bloud and Confiscations, not Justice) lawfull witnesses, such witnesses were the said Bernard and Pits; Monsters of men. See Sir John Gells
case

case stated: Printed about August, 1650. To cite any anti-ent known Laws or Statutes, or any other then their own new coined Acts, passed by this 8th. Parts of a House of Commons, (since they became elect Members chosen by Thomas Pride) is to incur the High Indignation of the Court, expressed abundantly in their words and looks. But to put them in mind of the Parliaments many Declarations, To maintain the ancient known Laws, Liberties and Properties of the People, is to scandall the present Government and incur the Censure of that unknown Mysterious Crime which knaves call Malignancy. The witnesses and Judges being thus irretragable; the first may swear what they will, the second may judge what they will, since they are left at large and have all things in *scrinio pectoris*: and Book Law must give place to Bench Law, The Jurisdiction and Authority of this New unparalleled Court is such a Mystery of iniquity, so unscrutable and unquestionable, that if a Prisoner scruple (in the least) either it, or any of the uncouth proceedings of it, it is a Mortall Sinne to him; and he is presently interrupted, and affronted both with disdainfull words and looks, And told, *We are satisfied with our Authority that are your Judges*, (So are Theeves upon the high way satisfied with their Authority that rob and murder us by Gods Providence and permission.) *It is upon Gods Authority and the Kingdoms* (yet what they do is against the will of God revealed in his Scriptures: and against the known established Lawes, Statutes and continuall Practise of the Kingdom:) *Which Authority commands you in the name of the People of England to answer them.* (Yet at least) 9. Parts of 10. of the People so much abhor these and other their Practises, that every mans mouth speakes against them with bitter curses and reproaches,

See the Trial
of King Char
I. in the Hi-
story of Inde-
pendency 2.
Part. pag. 91
&c.

to restrain which they have minted Acts of New Treasons, to make men Offenders, nay Traitors, even for bare words; and erected this bloody, illegall Theater, The High Court (so called, for its High Injustice) as a Spanish Inquisition over them, and every mans hand would be about their eares, did they not keep an Army of Janisaries to suppress them.) *Their Authority they do avow to the whole World, that the whole Kingdom are to rest satisfied therewith.* (You see here a Whip and a Bell provided to keep the whole Kingdom in awe: the declared Supreme power of their Sovereign Lord the People, must resign their known Lawes to their Trustees, their Representatives in Parliament, and take New Lawes from their Arbitrary votes, or woe to be to their Necks and Shoulders.) *I must interrupt you, what you do is not agreeable to the Proceedings of any Court of Justice. You are about to enter into Argument and dispute concerning the Authority of this Court: before whom you appear as a Prisoner; you may not dispute the Authority of this Court: nor will any Court give way to it, you are to submit to it.* (It is not safe to confute a lie told with Authority. Yet if a man be Endited of Treason or Felony in the Court of Common Pleas, a man may Demur to and dispute the Jurisdiction of that Court; because it is not in Criminall Causes, *Competens Forum*; nor the Judges Competent Judges: every man, and every cause must be tried *Suo Foro, non Alieno*. So if a Peer be arraigned in the Kings Bench. And for this upstart, unpresidented High Court; it is no Court of Judicature at all; as being erected without lawfull Authority; Consisting of Incompetent Judges: no Records belonging to it: and tending to disinherit, and disfranchise all the People of England:

land, and to murder them.) *You may not dispute the Jurisdiction of the Supreme and Highest Authority of England, from which there is no Appeal, The votes of the Commons of England assembled in Parliament is the Reason of the Kingdom.* (Oh Brutish, irrationall Kingdom! Where 40. or 50. Anabaptistick Members, the Dregs and lees of the House of Commons, after all the best and sincerest (7. Parts of 8.) had been racked and purged out at the Bunghole by *Cromwell the Bruer* and *Pride his Drayman* shall be called the Reason and Law of the Land. This confirms the truth of what King Charles I. Objected to the Parliament (whereof I have formerly spoken) *That they disposed of the Subjects Lives and Fortunes, by their own Votes, against the known Lawes of the Land.* But that there should be no Appeal to their declared Sovereign Lord the People, from their subordinate Trustees in Parliament is wonderfull; Considering that in all Governments the last Appeal is ever the Highest and most Absolute power. But it may be they will be the Peoples Trustees in spite of their Teeth, and by the power of the Sword; and so free themselves from rendering any account of their Stewardship. *You may not demure to the Jurisdiction of the Court. If you do, they let you know, that they overrule your Demurrer, and affirm their own Jurisdiction. Reason is not to be heard against the Highest Jurisdiction, the Commons of Engl. make a direct and positive Answer, either by denying or confessing, and put in immediately an issuable Plea, Guilty, or Not Guilty of the Charge, or we will record your Default and Contumacy, and by an implicate confession take you Guilty pro confesso, and immediately give Judgement against you.* This (as I told you before) is it that blanches the Deer into the Toile, But God deliver us from that

Jurisdiction that is too high to hear Reason : and that overrules Demurrers before they be heard.) I have told you as much of the proceedings of this Court as the Novelty, Obscurity, Uncertainty and confusion thereof will give me leave. Let me now (by way of overplus) give you the great dangers and Slavery that will befall all sorts of People if they tamely and cowardly suffer themselves to be deprived of their antient, Legall Trialls by Enditement and Juries of the Neighbourhood : (then which the whole world cannot boast of a more equall way) and suffer their Lives, Liberties, Estates and Honours to be subject to an Arbitrary, Extrajudiciall conventicle of Bloud, (*Cromwells New Slaughterhouse*) which hath neither Law, Justice, Conscience, Reason, President or Authority Divine or Humane, but onely the pretended Parliaments irrationall Votes and the Power of the Sword to maintain it, which will prove a Cittadell over their Liberties, a Snare to their Estates, a Deadfall to their Lives, and Scandal to their honors and Families, if not timely opposed.

1. *By the Law The Enditement must specifie what the Treason is, and against what Person committed; As, against our Sovereign Lord the King, his Crown and Dignity.* But in the said Articles of Impeachment, it is alleaged that the Treason is committed against the present Government; or, against the Keepers of the Liberties of England; but in this dead-water our turning Tide between the old Regall, and this New, unknown Government; no man knows how to do, look or speak for fear of contradicting the guilt of an Interpretative Treason, upon the said two Statutes for New Treasons, and before this boundless, lawless New Court

Court. And to say that Treason is committed against a Government in abstracto is Non-sence: it must be said that Treason is committed against the Governors in Concreto, naming them. For there being, no Treason without Allegiance; And Allegiance being a personall Obligation, must be due from a certain known Person, to a certain known Person or Persons. And therefore the Keepers of the Liberties of England, not being yet made particularly known to us, who they are, or where to be found, or what their power, Duty or Office is; and being not tied by any set Oath, to deal well and truly with the People, (as Kings are by their Coronation Oath; for if the stipulation be not mutuell, the People are Slaves, not Subjects.) Since the Duties of Allegiance and Protection; Obedience and Command being reciprocal (as they must needs be, the Parliament having declared the Supreme power to be in the People; they must not govern them *Mero Imperio* (by Lawless votes) like Turkish Tartarian and Russian Slaves.) I cannot owe nor perform Allegiance to those *Individua vaga* (the Keepers or Gaolers of our Liberties) nor to an Utopian Commonwealth. And without Allegiance no Treason: for in all Enditements of High Treason it must be alleaged, That the Accused did (*Proditoriè*) perpetrate such and such Crimes; *Contra debitam Allegantiam suam*. And the word (*Proditoriè*) signifies the betraying of a Trust: According to the Proverb, In Trust, is Treason. Now where there is no profession of Allegiance, there is no Acceptance of a Trust, no man can trust me against my will. I was born under a Regall Government, have read the Stat. Recognition, 1. Jac. Have taken (as well as others) the Legall Oathes of Allegiance, Obedience and Supremacy to the King his Heires and Lawfull Successors, imposed upon me by lawfull Authority, and from which no power

power on Earth can absolve me : and so much I attest in the Oath of Supremacy. And how I should now come (after the New Moduling of the Parliament and Kingdom by Souldiers) to owe Allegiance to *Cromwell the Bruer, Scot the Bruers Clerk, Bradshaw the Murderous Petty fogger, Sir Henry Mildmay the Court Pander and Projector, Holland the Linkeboy, John Trencharde* that packed a Committee (in which he was a Member) and voted to himself 2000*l.* *Love* the super-inducted Six Clerk, or any other of that Self-created Authority, let them sheath their swords and tell me.

See the Additionall Postscript at the Latter end of this Book.

2. *An Enditement must certainly allege the Offence committed, in respect of the Matter, Time, Place, Persons and other Circumstances ;* But in these Articles of Impeachment they tie themselves to no such certainties; Whereby the Accused knows not at what ward to lie, nor how to make his Defence. The Circumstances of Time, Place and Persons, being the assured Testimony of all Humane Actions. This Lawless Court leaves him in a vast Sea of Troubles, without Pole-star, card or compass to steer by : The Arbitrary Opinions of this Court, declared upon emergent Occasions, being a false-hearted Pilot to him. *These Judges not being of Counsel with the Prisoner, as our Legall Judges are, who swear to do Justice according to the Law.*

3. *By the Law, any learned man that is present, may inform the Court, for the benefit of the Prisoner, of any thing that may make the proceedings erroneous.* Cooks 3. Instit. p. 29. But the whole Proceedings of this Court, their Meeting and sitting being erroneous, here is no room left for Admonition, To take away their errors, is to take away Court.

4. Cooks

4. Cooks 2. Instit. pag. 51. expounding the 29. chapter of *Magna Charta* hath these words. *All Commissions ought to be grounded upon the Laws of England* (not upon the votes of the House of Commons) *and to contain this Clause in them. To do what is just according to the Laws and Customs of England*, (not to execute the severall powers given them by the Act. 26. March 1650) and a little further he saith, Against this Antient and Fundamentall Law I find an Act of Parliament made 11. Hen. VII. c. 3. That as well Justices of Assize as Justices of the Peace, without any finding or presentment by the verdict of 12 men, upon a bare Information for the King before them made, should have full power and Authority by their Discretions, to hear and determine all Offences and Contempts committed, or done by any Person or Persons, against the Form, Ordinance or effect of any Statute made and not repealed; saving Treason, Murder or Felony. By colour of which Act shaking this Fundamentall Law, it is not credible what horrible Oppressions and Exactions, to the undoing of infinite number of People, were Committed by *Empson* and *Dudley* Justices of the Peace throughout England. And upon this unjust and injurious Act, a New Office was erected (as commonly in like cases it falleth out) and they made Masters of the Kings Forfeitures. (I hear such an other Office will be erected, when the Novelty of this wonderfull High Court is lessened, and the yoke thereof thronghly settled upon the Peoples Necks) Yet observe the said Act. 11. Hen. VII. c. 3. went not so high as to Treason, Murder and Felony: But by the Stat. 1. Hen. VIII. chap. 6. the said Act 11. Hen. VII. was repealed, and the reason given, For that by force of the said Act it was manifestly known; That many sinister and crafty, forged and feigned Informations

formations had been pursued against many of the Kings subjects, to their great dammage and wrongfull vexation. The ill successe hereof (saith Cook) and the fearfull end of these two Oppressors, (who were Endited and suffered for High Treason for all the said Act 11. Hen. VII. passed in a full and Free Parliament. Cooks 3. Instit p. 208.) Should admonish Parliaments, That instead of this Ordinary and precious Triall by the Law of the Land, they bring not in Absolute and Partiall Trialls by Discretion. And in his 4. Instit. page 41. Cook saith, Let Parliaments leave all Causes to be measured by the golden and streightned wand of the Law, and not the uncertain and crooked cord of Discretion: for it is not almost Credible to foresee, when any Maxime or Fundamentall Law of the Land is altered, what dangerous inconveniences will follow; as appears by this unjust and strange Act 11. Henry VII. chap. 3.

5. This Parliament alwaies declared they bore Arms against the King, in Defence of the Laws, Liberties and Properties of the People. This way ran the whole current of their Declarations. And they alwaies reckoned Magna Charta, the Petition of Right and Trialls by Juries, the Chief and most Fundamentall of all our Laws. See their 1. Remonstrance: Therefore in their 7. Article against Strafford. They charged him with High Treason, for giving Judgements against mens Estates, without Trials by Juries. Much aggravated by Master St. Johns in his aforesaid Argument against Strafford. And for the better preservation of Legall Trialls by Juries, it is provided in the Bill of Attainder of Strafford, that the case of the same Earl should not be used as a President in succeeding times. And in two of this Parliaments late Declarations 9. Febr. and 17. March 1648. The Parliament promiseth,

To preserve and keep the fundamental Laws of the land, for preservation of the lives, liberties and properties of the people, with all things incident thereto. Now to erect an arbitrary lawless high Court, to give judgment against mens lives and estates, and attain their bloods, without Enditement found by a grand Jury, and a trial by a Jury of twelve sworn men vicineto, is a far fouler breach of trust in them against their Sovereign Lords the People, than all they charged the King withall, and a far higher act of tyranny and injustice than either the late King, or Empson and Dudley, or Strafford were accused of. But if they alledg, They do not put down Juries in general, but only in some particular mens cases and upon necessity. I answer, That we are all born Freemen of England alike, That our ancient known Laws, Laws Courts and trials by Juries are our inheritance equal alike to all. And one party or part of the people ought not to be disherited, disfranchised or forejudged no more than another. No man can be said guilty of any crime until he be legally convicted and sentenced, the Law must first go upon him and condemn him, Ubilex non distinguit, non est distinguendum. If we do not live all under one Law and form of Justice, we are not all of one Commonwealth. See the aforementioned Gentlemans Argument, against the special Commission of the Court of York. For Necessity; our present power is under none, but the fears and terrors of their own guilty consciences. No apparence nor probability of any enemy by their own confession; nor can they plead in their excuse, a necessity which they have brought upon themselves. I know some Kings have, de facto, used the Animadversion of the Sword to cut off such powerful and dangerous persons as could not safely be called to account by the Law; so dyed Joab, Adonijah, &c. for which

the rule is, Neminem adeo eminere debere, legibus interrogari nequeat; qui jus æquum ferre non potest, in eum vim haud injustam fore. No man ought to advance himself above the powers of the Law; he that will not submit to equal right, if he be cut off by violence, suffers no wrong; but this is to be understood of the eminency and greatness of the person, not of the greatness of the crime, whereof no man is to be forejudged, because a great crime may prove a great calumny, until a legal trial have adjudged it. But there is no person in England so eminent for power or Authority, but that the least of Bradshaws Ban-dogs can drive him to the Slaughter-house, & make him offer his throat to Keeble. Therefore Animadversio Gladii, if at any time lawful, is now unlawful. To make great examples upon men of little power, is great injustice. But the way of this Court is not Animodversio per Gladium. It is a Mocking, a Counterfeiting, an Adulterating and Alchimisting of Justice; it is to falsifie her weights and ballance, and steal her sword to commit Murder withall.

6. By the known Laws Matter of fact is intrusted to the Jury, matter of Law to the Judges, to prevent all errors, combinations and partialities. The Judges are sworn to do justice according to the Law; the Jury are sworn to finde according to their evidence. But in this high Court the Commissioners or Judges are all packed, confiding men, chosen by and out of one party, to destroy all of a different party. They usurp the office of Judges, not being sworn to deal well and lawfully with the people (as by the said Stat. 18 Ed. 3.) nor to do justice according to the Law. But only to execute powers given by the said Act, 26. Mar. 1650. And they arrogate (as Jury-men) to be Triers of the Fact, without being sworn, to find according

to

to evidence. So that they are Judges, Juries, and parties, (& for ease of their tender consciences (without any Oath of Indifferency. A most excellent Compendium of Oppression. They may go to the Devil for injustice, and not be forsworn. Great is the priviledge of the godly.

7. The prisoner may except against his Jurors, either against the Array, if the Sheriff or Bayly impannelling the Jury, be not wholly disingaged and indifferent, both to the cause, and to the parties, prosecuting, and prosecuted; or against the Poll, he may challenge 35 peremptorily, & as many more as he can render legal cause of challenge for. As for defect of estate, or other abilities, or for partiality, Disaffection, Engagement, Infamy. But this Array of Jury-men Judges (a Medley so new we know not how to express it) though picked and empannelled by an engaged remainder of the Commons, and abnoxious to all exceptions, must not be challenged, their backs are too much galled to indure the least touch. Take heed you scandal not the Court (cries Mr. Attorney) See Col. Andrews three Answers.

8. Many exceptions in a legal Trial, are allowed against Imperfections, Uncertainties and Illegalities in the Bill of Endictment, for the advantage of the Prisoner. But no Exceptions are allowed against these illegal Articles of Impeachment, which are made uncertain, intricate and obscure and ambiguous purposely to puzzle, confound and entangle the Respondent.

9. By the Law a bill of Endictment must have two full and clear lawful witnesses to every considerable Matter of Fact, both at finding the Bill and at the Trial. Cooks
3. Instit. pag. 25, 26. And Probationes debent esse luce
clariores. Proofs must be as clear as the Sun, not ground-
ded upon Inferences, Presumptions, Probabilities. And
the Prisoner must be Provablyment Attaint, saith the

Where
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Stat. 25. Ed. 3. chap. 2. Cooks 3. Instit. pag. 12. *The word (attainted) shews he must be legally proceeded with; not by absolute power as formerly had been used (and as is now used by this bloody High Court)* But before these Slaughter-men of the High Court, all manner of witnesses, Legal or Illegal; one or two, sworn or not sworn, or apparently forsworn and suborned, and all proofs clear or not clear are sufficient. The Prisoner is sent thither foredoomed, and hath its deaths Mark, his fate in his forehead.

10. The said Act 26. March 1650. carries two faces under one hood, and looks backwards as well as forwards. To facts precedent as well as subsequent the said Act, contrary to the nature of all Laws, whose office is to prohibit it before it punish, to warn before it strike. Where St. Paul defineth *Sin to be the breach of Commandment, or Law. I had not known Sin but by the Law.* The Law must therefore be precedent to the Offence. But these Acts are not *Laws to admonish*, but *Lime-twigs and Traps to ensnare and catch men.* See Col. Andrews 3. Answers at the latter end of this book.

Fourthly and lastly, I am to consider, *To what end and purpose this new invented High Court is constituted and appointed?* Concerning which see a Letter dated 6. June 1650. *Stilo veteri*, from the Hague, (supposed to be *Walter Stricklands*, the Parliaments Agent there) as I finde it in *Walter Frosts* brief Relations of some affairs and transactions, &c. from Tuesday June 11. to June 18. 1650. wherein the Epistoler hath these words, “*One piece of the cure (viz. of the dangers that threaten your new State) must be Phlebotomy*, but “*then you must begin before Decumbency*, and then it “*wil be facile to prevent danger, &c. they are here most* “*of all afraid of your high Court of Justice*, which they “*doubt*

doubt may much discourage their party, they will, you would not renew the power thereof, but let it expire: then they think that after *Michaelmas* they may expect Assistance with you. And indeed that Court is of almost as much use to you as an Army: and will prevent the rising of as many Enemies, as the other will destroy, only you must be sure to execute Justice there with all severity. A few of the first stirrers taken away, by the power thereof, without respect to cousin or Countrey, will keep all the rest quiet. But *whosoever that Court condemns, let them be as already dead, &c.* But let them be most free in cutting the vena Cœphalica (*that is the Presbyterian Party*) for the Basilica (or Royal Party) will be latent. The Median (or Levellers) would be spared as much as may be, that the body be not too much emaciated. Besides, the blood is most corrupt in the Cœphalicks (*or Presbyterians*) and is the very *causa continens* of your disease. You need not fear to take freely of this vein, &c. Here you see this State Mountebank gives you the use and application of this corrosive. (The High Shambles of Justice) so fully that I shall not need to comment upon it. And in the latter end of a Letter from *Cromwel*, dated from *Dunbar*, 4. Sept. 1650. (as I find it in *Politics*) speaking of his new purchased victory over the *Scots*, *Cromwel* saith; *God puts it more and more into your hands to improve your power, (viz. your absolute Authority) we pray own his People more and more, (that is, the Army) they are the Chariots and Horsmen of Israel (of the Kingdom of the Saints) disown your selves but own your Authority (which you enjoy under the Protection of the Army, your Lords Paramount) and improve it; to Curb the Proud and Insolent, &c.* (That is, all men of dif-

ferent opinions and parties from them, that will not engage to be true and owe Allegiance to the Kingdom of the Saints, and resign their Laws, Liberties and properties to their lusts and wills.) That I have not misconstrued the contents of *Cromwells* mystical letter, will appear by a *Discourse in the same Politics*, Numb. 17. from Thursday Sept. 26. to Oct. 3. 1650. Where (according to his custom) delivering forth State-Oracles to the people, He tels them in plain English, *That after the Confusions of a Civil War, there is a necessity of some settlement, and it cannot be imagined (the Controversie being determined by the Sword) that the Conquerours should submit to the conquered, though more in number than themselves. Nor are they obliged to settle the Government again according to the former Laws and Constitutions, but may erect such a form as they themselves conceive most convenient for their own preservation. For after a Civil War the written Laws (viz. established Laws of the Nation) are of no force, but onely those which are not written. (And a little after) the King having by Right of war lost his share and interest in Authority and power, being conquered, by Right of war the whole must needs reside in that part of the People which prevailed over him: There being no middle power to make any claim, and so the whole Right of Kingly Authority in England being by Military Decision resolved into the prevailing Party, what Government soever it pleaseth them to erect, is as valid de Jure, as if it had the consent of the whole Body of the People. That he should affirm, That after a Civil War the Established Laws cease, is so gross a piece of ignorance, that there is hardly any History extant but confutes it: After our Barons war, and the Civil War between York and Lancaster,*

caster, Our Established Laws flourished ; so did they after the *Norman* Conquest. How many Civil Wars in *France* have left their Laws nntouched ? That of the Holy Leage lasted 40 years ; *Belgia* keeps her Laws maugre her intestine Wars : What is now become of the Parliaments declared Supreme Power and Sovereign Lord the People, the Original and Fountain of all just power ? are they not all here proclaimed Ear-bored slaves for ever ? But I had thought that an Army of Mercenary Saints raised, payed and commissioned by the Parliament to defend the Religion, Laws, Liberties and Properties of the people, and the Kings Crown and Dignity, according to the Protestation and Covenant, and the Parliaments Declarations, would not have made such carnal and hypocritical use of their Victories gotten by Gods providence and the peoples money, as to destroy our known Laws, Liberties and Properties, and claim by Conquest, and impose their own lusts for Laws vpon us, thereby rendring themselves Rebels against their God, their King and Countrey. Nor was it ever the State of the Quarrel between the King and Parliament whose slaves the people should be ? Or whether we should have one King, Governing by the known established Laws ? or 40 Tyrants Governing by their own lusts and arbitrary votes, against our written Laws ? Nor can the success make n Conquest just, unless the cause of the war were originally just, and the prosecution thereof justly managed. As

1. To vindicate a Just Claim and Title.
2. *Ad-res repetendas*. To recover Damages wrongfully sustained.
3. To repel an injury done to your self, or to your Ally in league with you.

The ultimate end of these wicked endeavors is, To
establish

establiſh and cement with the blood of their adverſaries, the Kingdom of the Brambles or Saints, already founded in blood, by cutting of all ſuch by their ſaid New Acts of Treason and High Court of Juſtice, as will not bow their Necks to their Iron yoke. Which appears more clearly in an *Additional Act* giving farther power to the ſaid High Court, (dated 27. Aug. 1650.) *To hear and deiermine all Miſpriſions or Concealments of Treasons* mentioned or contained in any of the ſaid Articles or Acts of Parliaments: And to inflict ſuch puniſhments, and award ſuch execution, as by the Laws and Statutes have been, or may be inflicted. *This Law (if I miſcal it not) conſidering how they have multiplied Treasons by their ſaid 3 New Statutes, 14. May, 17 July 1649. and 26. March 1650. Whereby bare words without Act are made High Treason, contrary to thoſe well approved Statutes, 25 Edw. 3. chap. 2. 1 Hen. 4. chap. 10. 1 Edw. 6. chap. 12. 1 Mariæ, chap. 1. Cook 3 Inſtit. ſaith, That words may make an Heretick not a Traitor, Chap. High Treason. And the Scripture denounceth a woe to him; That maketh a man an Offender for a word, is one of the cruelſt, and moſt generally dangerous and entrapping that ever was made. For hereby all relations, Husband and Wife, Parents and Children, Brothers and Sisters, Maſters and Servants, are all injoynd to be informers againſt, and accuſers of one another (which is to take upon them the Devils office (and be Accuſatores Fratrum) for light and vain words ſpoken only in paſſion or ignorantly: or elſe they fall into the jaws of this all-devouring Court, from whence, no more then from hell, there is no redemption) for Miſpriſion of Treason: the Penalty whereof is loſs of liberty and lands for life, and of goods for ever,*
Who

Who can imagine lesse hereby, but that our Statists intend to raise a yearly revenue by this Court, by Forfeitures and Confiscations: and to erect an Office of Master of the States Forfeitures: like Empsons and Dudleys in Hen. VII. time aforesaid. And so continue this Court, to weede out the Ancient Inhabitants Canaanites and Amalekites. The said Additional Act, 27. Aug. 1650. concludes, That the said High Court shall not Examine, Try or proceed against any person other then such as shall be first by name appointed by the Parliament or Council of State. It should seem the Parliament and Council of State supply the want of a Grand Inquest; and their Appointment is in stead of a Bill of Enditement found and presented. As Assuredly as the High Inquisition was erected in Spain by Ferdinando and Isabella to extirpate the Mahometan Moors: And the said Council of Blood in the Low Countreys, by the Duke D' Alva to weed out the Lutherans, Calvinists and Anabaptists. So is this High Court set up in England, to root out the Royallists, Presbyterians and Levellers; and generally all that will not wholly concur with our Independents in Practice and Opinions. As will manifestly appear when their work is done in Scotland, which will soon be effected: the more zealous Scots being now as ready to sell their Kingdom; as they were formerly to sell their King.

I. Conclude therefore upon the Reasons aforesaid; That because the Commissioners or Judges are not sworn to do Justice according to the Laws: and are parties pre ingaged (as well as their Masters, and pay Masters, that named them) ignorant men, and of vild & base professions, incapable of places of Judicature, Necessary Persons, and some of them Scandalous, and the High Court it self hath neither Law, President, nor any

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just

10. Decemb.
1650. A New
Act passed, for
establishing
an High Court
of Justice in
Norfolk, Suff-
olk, Hunting-
don, Cambridge,
Lincoln, and
the Isle of Ely,
&c. And so by
degrees this
gangrene shall
enlarge it self
all the King-
dom over.

x

just Authority for constituting thereof or the Judges therein. And all proceedings before them are directly Contrary to *Magna Charta*, the Statute 25. *Edw. III.* chap. 2. The Petition of Right and all other known and Established Laws, and the continual Practice of our Nations; and (in many points) contrary to the Law of God and the Dictates of Right Reason. That these Commissioners are Incompetent Judges; Their Court an Extrajudicial Conventicle, tending to disinherit, disfranchise and enslave all the Freemen of the Nation; and all Proceedings before them are void, and *coram non Judice*. See Col. Andrews 3. Answers, The said High Court of Justice to be a meer bloody Theater of Murder and Oppression. It being against Common Reason, and all Laws divine and humane, That any man should be Judge in his own Cause. *Neminem posse in sua causa Judicem esse*. Is the Rule in Law. But this Parliament and Council of State know they cannot establish and confirm their usurped Tyranny, (The Kingdom of the Saints,) eat up the People with Taxes, and share publique Lands, Offices, and Money amongst themselves, enslave the Nation to their Lawless wills and pleasures, but by cutting off the most able and active men of all opposite parties by some such expedient as this Arbitrary Lawless High Court is. The old Legal way by Juries (being found by John Lilbourns Trial) to be neither sure enough nor speedy enough to do their work. A Butcher-Rowe of Judges being easier packed, then a Jury who may be challenged. So that it fareth with the People of England, as with a Traveller fallen into the hands of Thieves. First, they take away his Purse. And then, to secure themselves, they take away his life. So they Robbe him by Providence, And then Murder him by Necessity. And (to bring in their third insisting Principle) they may ab-

allege; They did all this upon Honest intentions; to enrich the Saints, and rob the Egyptians. With these 3. Principles they Iustifie all their Villanies. Which is an Invention so meerly their own, That the Devil must acknowledge: They have propagated his Kingdom of Sinne and Death more by their impudent Iustifications, then by their Turbulent Actions.

An Additional Postscript.

SINCE the Conclusion of the Premises hath hapned, the Trial of that worthy Knight Sir *Iohn Stowell*, of the County of *Sommer set*:. Who having bin often before this Court, hath so well defended himself, and wiped off all Objections, and made such good use of the Articles of the Rendition of *Excester*, that in the Opinion of all men, and in despite of their ensnaring A&s for New Treasons, he cannot be adjudged guilty of any Treason, Old or New, which was the Sum and Complement of the Charge against him. Wherefore the Court put off his Trial for a longer time, to hunt for New Crimes and Witnesses against him. At last came into the Court as a witness *Iohn Ashe*, notwithstanding he is a Party many wayes engaged against him. 1. *Ashe* is a Parliament-man; in which capacity Sir *Iohn Stowel* bore Arms for the King against him. 2. *Ashe* as a Parliament-man is one of the constitutors of this murderous Court and the Iudges thereof, and therefore their Creatures (who expect rewards from them) bear a more awful respect to his testimony, then a witness ought to have from Iudges. 3. It is publickly known that *Ashe* hath

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begged

begged of the House a great summe of mony out of the Composition for, or Confiscation of Sir *Johns* Estate. And 4ly. It is known to many, That during Sir *Johns* many years Imprisonment *Ashe* often labour'd with Sir *John* to sell unto him for 4000. l. a Parcel of Land which cost Sir *John* above 10000 l. promising him to passe his Composition at an easie rate, to procure his enlargement from Prison, and send him home in peace and quiet if he granted his desire. But although with all their malicious diligence, they cannot finde him guilty of High Treason, yet their Articles of Impeachment Charge him in general Terms with Treason, Murder, Felony, and other High Crimes and Misdemeanors; and amasse together such a Sozites and an Accumulation of Offences, as if one fail another shall hit right to make him punishable in one kinde or other: such an hailshot charge cannot wholly misse; either they will have life, estate, or both; Contrary to the nature of all Enditements and Criminal Charges whatsoever; which ought to be particular, clear and certain (Lamb. page 487.) that the accused may know for what Crime he puts himself upon issue; But this Court (as High as it is) not being Constituted a Court of Record; the Prisoner, and those that are concerned in him, can have no Record to resort to either.

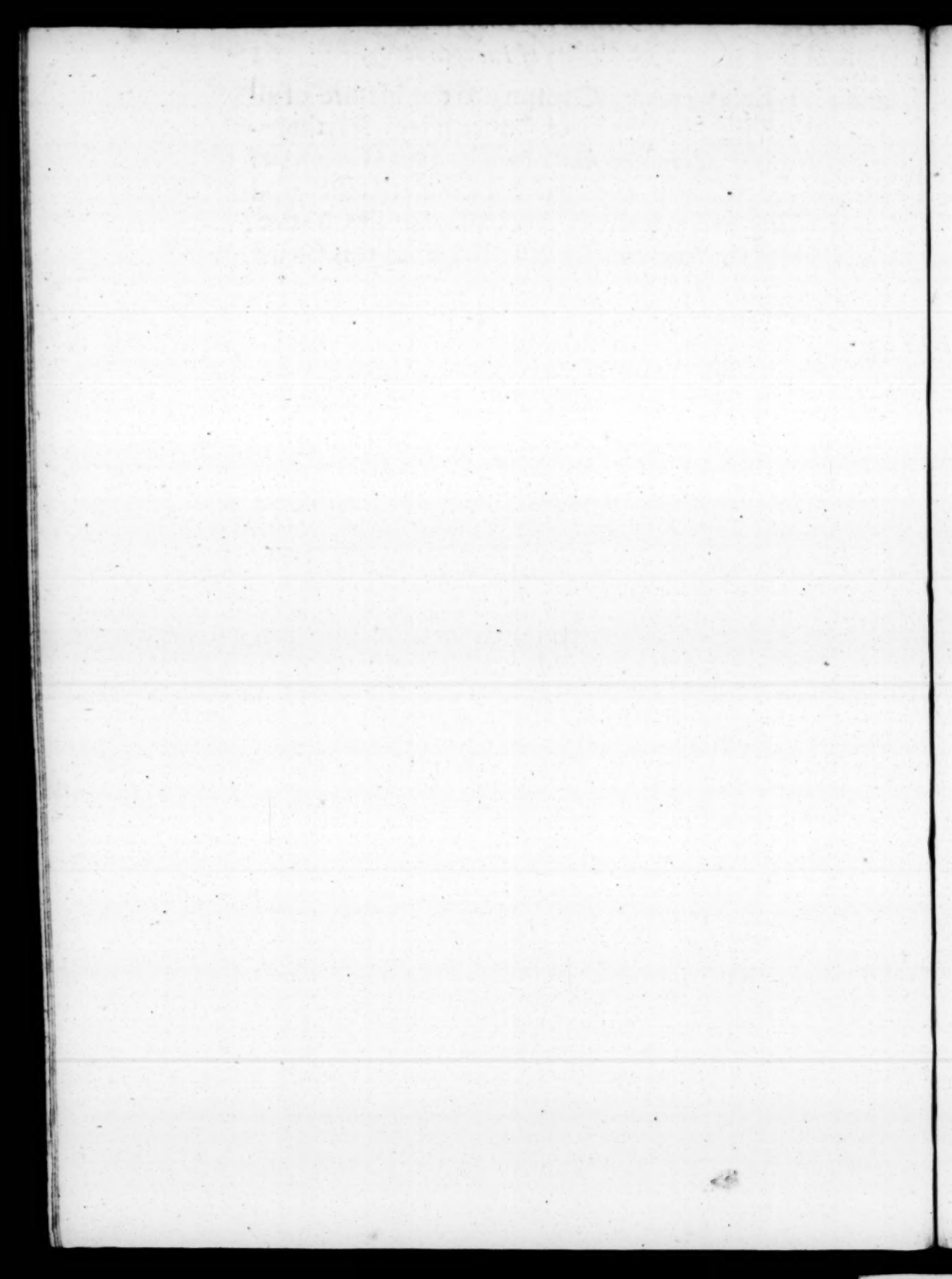
1. To demand a Writ of Errour, in Case of Erroneous Judgment.
2. To ground a plea of *Auterfois Acquite*, in case of New Question for the same fact.
- 3ly, Or to demand an enlargement upon Acquital.
- Or 4ly, To demand a writ of conspiracy, against such as have combined to betray the life of an innocent man.

Whereby it follows, That this prodigious Court hath power only to Condemn and Execute; not to Acquit and

and give Enlargement; Contrary to the Nature of all Courts of Judicature, and of Justice it self: it is therefore a meer *Slaughter-house* to Commit Free-State Murders in, without, nay against Law and Justice: and not a Court of Judicature; to condemne the *Nocent*, and absolve the *Innocent*. And the Iudges of this Court runne Parallel with their Father the Devill; who is ever the Minister of Gods wrath and fury, never of his Mercy.

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The



Part III.
The History of the Parliament
The humble Answer of Coll. *Eusebius Andrews* Esquire, to the Proceedings against him before the Honourable, The high Court of Justice 1650.

THe said Respondent (with favour of this Honourable Court) reserving & praying to be allowed the benefit and liberty of making farther Answer, if it shall be adjudged necessary, offereth to this Honorable Court

That by the Stat. or Charter stiled *Magna Charta*, (which is the Fundamental Law, and ought to be the Standard of the Laws of *England*, Confirmed above 30. times, and yet unrepealed, it is in the 29. Chapter thereof granted and enacted,

1. *That no Freeman shall be taken or imprisoned, or be disseised of his Freehold or Liberties, or Free Customs; or be out-lawed or exiled, or any other ways destroyed, Nor we shall not pass upon him, but by a lawful Judgment of his Peers, or by the Law of the Land.*
2. *We shall sell to no man, nor deferr to any man Justice or Right.*

By the Stat. 42. Ed. III. chap III. The Great Charter is commanded to be kept in all points: and it is enacted.

That if any Stat. be made to the contrary, That shall be holden for none.

By the Act 26. March 1650. entitled, An Act for establishing, An High Court of Justice, Power is given to this Court; To Try, Condemn, and cause execution of death to be done, upon the Freeman of *England*, according as the Major number of any 12. of the Members thereof shall judge to appertain to Justice.

And

And therupon the Respondent doth humbly inferre,
and affirme that *the Tenor of the said Act is diametri-
cally opposite to, and inconsistent with the said Great
Charter.* And is therefore by the said recited Stat.
42. Ed.III. to be holden for none.

Secondly, That it can with no more Reason, Equity
or Justice, hold the reputation or value of a Law, (if
the said Stat. had not bin) then if (contrary to the 2d.
Clause of the 29. chap of *Magna Charta*) it had bin
also enacted, *That Iustice and Right shall be deferred
to all Freemen, and sould to all that will buy it.*

By the Petition of Right, 3. Car. upon premising:
That contrary to the Great Charter, Trials and Execu-
tions had bin had and done against the Subjects, by
Commissions Martial, &c. it was therby prayed, and by
Commission enacted. That:

1. *No Commissions of the like nature might be thence-
forth issued, &c.*

2. *To prevent least any of the Subjects should be put to
death, Contrary to the Laws and Franchises of the Land.*

The Respondent hereupon Humbly observeth; and
affirmeth: *That this Court is (though under a different stile)
in nature, and in the Proceedings therby directed, the same
with a Commission Martial.* The Freemen thereby being
to be tried for life, and adjudged by the Opinion of the Ma-
jor Number of the Commissioners sitting, as in Courts of
Commissioners Martiall was practised; and was agreeable
to their constitution: *And consequently against the Petition
of Right* : in which he, and all the Freemen of England
(if it be granted there be any such) hath and have Right
and Interest, & he humbly claimes his right accordingly.

*By the Declarations of this Parliament, Dec. and Jan. 17.
1641.* The benefit of the Laws, and the ordinary course
of Justice are the Subjects Birthright.

By

By the Declaration, 12. July. 6. 1. Octob. 1642. The Prosecution of the Laws, and due administration of Justice, are owned to be the justifying cause of the War, and the end of the Parliaments Affaires managed by their Swords and Counsels, and Gods curse is by them imprecated, in case they should ever decline those ends.

By the Declaration 17. Aprill 1646. Promise was made not to interrupt the Course of Justice, in the ordinary Courts.

By the Ordinance or Votes of Non-addresses, Jan. 1648. It is assured, That, though they lay aside the King; yet they will govern by the Laws, and not interrupt the course of Justice, in the ordinary Courts thereof.*

And therefore this Respondent humbly averreth and affirmeth, That the constitution of this Court, is a breach of the publique Faith of the Parliament exhibited and pledged in those Declarations and Votes to the Freemen of England.

And upon the whole matter, the Respondent (saving as aforesaid) doth affirme for Law and claimeth as is Right. That:

1. This Court in defect of the validity of the said Act, by which it is constituted, hath no power to proceed against him, or to presse him to a further Answer.
2. That by vertue of *Magna Charta*, The Petition of Right, and the before recited Declarations, he ought not to be proceeded against in this Court, but by an ordinary Court of Justice, and to be tried by his Peers.

* They forget the 2. Declarations
9. Febr. 17. March 1648.

And humbly prayeth : That this his present
Answer and *Salvo* may be accepted
and registred.

Eusebius Andrewes.

The Second Answer of Col. *Eusebius Andrews* Esquire, To the Honorable, The High Court of Justice.
1650.

THe said Respondent (with the Favour of this Honorable Court) reserving and praying to be allowed the Benefit, and Liberty of making further Answer, if it shall be Necessary. In all humbleness for the present Answer offereth to this Honourable Court.

That by the Letter and genuine sense of the Act, entituled *An Act for establishing an High Court of Justice. The said Court is not qualified to try a Freeman of England, (such as the Respondent averreth himself to be) for life in case of Treason.* For that: 1. *The said Court is not constituted a Court of Record; neither hath Commission returnable into a Court of Record.*

So that: 1. *The State cannot upon the Record (and but upon Record cannot at all) have that account of their Freemen, which Kings were wont to have of their Subjects, and States exact else where at the hands of their Ministers of Justice.*

2. *The Freemen, and those who are or may be concerned in him, can have no Record to resort to, by which to preserve the Rights due to him and them respectively.* viz.

1. *A writ of Errour in case of erroneous judgment.*
2. *A plea of *Anterfoies* acquit, in case of new question for the same fact.*
3. *An Enlargement upon Acquittal.*
4. *A Writ of Conspiracy, not to be brought until Acquittal, against those who have practised to betray the life of the Respondent.*

1. *The*

1. *The Writ of Errour is due by Presidents.*

Paschæ 39. Ed. III. John of Gaunts Case Rot. Parliament. 4. Ed. III. Num. 13. Count de Arundells Case. Rot. Parliament 49. Ed. III. Num. 23. Sr. John of Lees Case

2. *Auiterfois acquit* appears by:

Wetherell and Darleis Case. 4. Rep. 43. *Eliz. Vaux* his Case. 4. Rep. 33. *Eliz.*

3. *The Enlargement* appears by :

Stat. 14. Hen. IV. chap. 1. Diers Reports fol. 121. The year book of Ed. IV. 10. fol. 19.

4. *The writ of Conspiracy*, by :

The Poulters Case. 9, Rep. fol. 55.

This Court is to determine at a day, without account of their proceedings, and have power to try, judge, and cause Execution: but not to acquit or give Enlargement. So that the nocent are thereby punishable; the injured and betrayed not vindicable. Which are defects incompatible with a Court of Iustice, and inconsistent with Iustice it self; and the honor of a Christian Nation and Common wealth.

2. *The Members of this Court, are by the said Act directed to be sworn.*

1. *Not in conspectu populi;* For the Freemans satisfaction.

2. *Not in words of Indifferency* and obliging in equality.

3. *But in words of manifest partiality, viz.*

You shall swear; That you shall well and truly, according to the best of your skill and knowledge, execute the severall powers given you by this Act.

1. *If the Court be Triers and Iudges too, it is humbly offered by the respondent, that it is but reasonable, that they should be sworn as triers; in the sight of the Freeman who shall be upon his Triall.*

2. *And, that as Iustices of Oyer and Terminer (They being authorized to hear and determine by the words of the Act. They should take an oath, such as is usual and equal, set down E. III.*

Viz. You shall swear, that well and lawfull you shall serve our Lord the King, and his People in the Office of Justice, &c. And that you deny to no man Common Right.

3. Or that this Court (taking Notice of such high matters as Treason, upon the guilt wherof the Freemens life depends) should take an Oath (at least) as equall as a Justice of the Peace. *Daltons Just. of Peace, fol. 13.* the words are,

I A. B. do swear that I will do equall Right, &c. according to my best wit, cunning and power, after the Laws and Customs of the Land, and the Statutes therof made, &c.

4. If the Court will be Judges and Trier too: (for they have power given them to conclude the Freemen, by the opinion of the major number of twelve, holding some resemblance (but with a signal difference) with the verdict of a Jury) it were but reasonable that they should take an Oath correspondent to that usually administred to Jury-men. The words are,

You shall well and truly try, and true deliverance make betweene the Keepers of the Liberties of England, and the Prisoner at the Bar, according to your evidence. So help you God, &c.

5. When this Court (as it is now constituted) hath condemned a Freeman, by applying their skill and knowledge to the power given them, whether justly or not: the Oath injoynd them by the Act 26. Marh, 1650. is not broken, literally; as to be exactable by man, though God will have a better account.

And therefore upon the whole matter premised:

The Respondent (saying as before) averreth for Law and Reason: This Court by the words of the Act constituting it, is not qualified, (in respect of the objected defects) to passe upon him for life in case of Treason, And prayes this his 2. Answer may be received, with the *Salvo's*, and registred,

Eusebius Andrews.

The third Answer of Coll. *Eusebius Andrews* Esquire, to the Honorable,
The High Court of Justice. 1650.

THe said Respondent (with favour of this Honourable Court) reserving and praying to be allowed the benefit and liberty of making further Answer, if it shall be necessary, in all humbleness for present Answer offereth to this Honourable Court,

1. That it is his Right (if he admit this Court to be duly and legally established, and constituted as to their being a Court) to be tried by his Peers; men of his own condition and Neighbourhood.

2. That it is within the power of this Court, by the Letter of the Act, 26. March 1650. Or (at least) not repugnant to the Act, to try him by such his Peers, &c.

1. That it is his Right to be tried only so: appears by

Magna Charta, chap. 29. 25. Ed. 1. chap. 1. and 2.

25. Ed. 3. chap. 9.

25. Ed. 3. chap. 2. and 4.

28. Ed. 3. chap. 4.

37. Ed. 3. chap. 18.

42. Ed. 3. chap. 3.

By all which this Right is maintainable; And the Proceedings contrary thereunto will be held for none, and to be redressed as void and erroneous.

So that if the Laws and Courts were not obstructed in the cases of some sort of Freemen of *England*, the whole Proceedings contrary to these Laws without a Jury of his Peers, were avoidable and reversible by Writ of Errour, as appears by the Presidents vouched in the Respondents second Answer.

3. That it is in the Courts power, To try the Freeman, & consequently the Respondent, by a Jury of his Equals; The Court is humbly desired to consider the words of qualification.

1. *The Court is Authorised; To hear and determine: and so (if at all Commissioners) then Commissioners of Oyer and Terminer, and such Commissioners, in their natural constitution and practical execution, do proceed against Freemen according to Law by a Jury of their Peers, and not otherwise.*

2. *Authorised to proceed to Trial, condemnation and execution: But not restrained to the manner limitative: As, to Triall by the Opinion of the Court, as Triers Nor exclusive. As, to Triall per pares. But is left in the Manner, as in the Judgment it self. To the Opinion of the major part of 12. and if they shall think fit to try by a Jury, it will be no offence against the Act, there being no Prohibition to the contrary.*

And though this Respondent insisteth upon his said Right, consisting with the Courts said power, and the more to induce the Court to grant him his said Right; He humbly representeth the wrong done to himself, and in him to the Freemanzy of England in the following particulars, against their just Rights depending upon such Trials to be allowed or denied.

1. *Challenges to his Triers peremptory, or with cause of Challenge.*

2, *Seeing, hearing, and counter-questioning the witnesses for clearing of the Evidence: in matter of Fact and Circumstance*

3. *The being convicted or acquitted by a full and fully consented verdict.*

To all which benefits as his undoubted Right, and the Right of all the Freemen of England, the Respondent maketh claim by these Reasons, Laws and Presidents following.

1. *The benefit of Challenges by the learning of Stanford in his Pleas of the Crown, Title challenge fol. 150. To challenge 35. without Reason shewed; and with Reason shewn, without Number adjudged 32. Hen. VI. in Poinings case, abridged by Fitzherb. Tit. Challenge, fol. 26. allowed in Hillary 1. Jac. Sir Walter Rawleigh and Brooks.*

2. *To the hearing and questioning the value and weight of the witnesses. The Laws are plain in Stanfords pleas of the Crown fol. 163, 164. Stat. 1. and 2. of Phil and Mary, Chap. 10, 11. 1 Ed. VI. chap. 12. Cookes 3. Instit. pag. 12. upon the words in the St. 25. Ed. III. chap. 2. (Provablement atteint) Because the punishment was heavy, the proof must be punctual, and not upon Presumptions, or Inferences, or Streins of wit, nor upon Arguments simili, or Minori ad Majus, &c. But upon good and clear proofs, made good also by the St. 1. Ed. c. 6. 19. Ed. c. 1.*

3. *A verdict by Jury passeth from all, or not at all, in this way of proceeding by the Court immediatly: it passeth by way of concurrence (or voting) the great fault found with the Star-Chamber; and all Commissionary Courts, proceeding without presentment or Enditement.*

4. *A Verdict passeth from a Jury before discharged, upon their Affairs of business, or supplies of Nature; to prevent corruption by money or power. In this way of Trial a man may be heard to day, and a Sentence given at leisure, when the power and will of those by whom the Freeman is prosecuted, be first known. And from such a proceeding this Respondent can hope little equality; he being (to his knowledge) forejudged already by them.*

And therefore (if at all this Honourable Court think fit to proceed to a Trial of this Respondent) he claims the benefit of Trial *per pares*: by Evidence *viva voce*. And rests on the Opinion of the Court; saving (as formerly) Liberty of farther Answer, if over-ruled.

And prays that this his Answer and Salvos may be accepted and registred.

Eusebius Andrews.

WHereas mention hath bin made in several printed Books, that *John Fowke* Alderman, was one of those persons, that did actually sit as Judges upon the Trial of his Majesty, with the Councel and Attendants of the Court. And was in the number of the Judges at the Kings sentence of death. These are to give notice to all men, that the same is most false and scandalous, as will many wayes appear; And in particular, by the Certificate of *Henry Scobell* Clerk of the Parliament, in these words following, (*ViZ.*)

IN a Book Ordered by the Parliament to be kept among the Records of the Parliament read in the House the 11. of December 1640. and Entituled, *A Journal of the Proceedings of the High Court of Justice, erected by Act of the Commons of England*, Entituled, *An Act of the Commons of England in Parliament Assembled, for Erecting of an High Court of Justice, for the trying and judging of Charles Stewart, King of England*; In which Books are set down the Names of the Commissioners, appearing each day in Court. Having diligently searched the same, the name of *John Fowke* Alderman of *London*, is not therein mentioned, as being present with the Commissioners at any meeting upon the said Trial, either publike or private.

March 28. 1660.

Henry Scobell Clerk of
the Parliament.

